APR 25 1975

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1335

DONALD RINGGOLD and JOHN C. ASHHURST,

Appellants,

—v.—

BOROUGH OF COLLINGSWOOD,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

JURISDICTIONAL STATEMENT

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ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the Supreme Court of New Jersey entered on January 24, 1975, affirming the conviction of Appellants, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial federal questions are presented.

Opinion Below

The opinion of the Supreme Court of New Jersey is reported at 66 N.J. 350 (Appendix A). The opinion of the Superior Court of New Jersey, Appellate Division (Appendix B); the opinion of the Camden County Court (Appendix C); and the decision of the Municipal Court of the Borough of Collingswood (Appendix D) are not reported.

Jurisdiction

This criminal action was commenced by the issuance of criminal complaints against Appellants (Appendix G), citing them for violating the provisions of Section 1 of Borough Ordinance No. 601 of the Borough of Collingswood (Appendix F) on November 16, 1970. The judgment of the Supreme Court of New Jersey was entered on January 24, 1975, and notice of appeal was filed in that Court on April 21, 1975. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Section 1257(2). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case; *Cantwell* v. *Connecticut,* 310 U.S. 296; *Jamison* v. *Texas,* 318 U.S. 413; *King Manufacturing Co.* v. *Augusta,* 277 U.S. 100.

Questions Presented

1. Where a borough ordinance requires that one who is not in the business of selling goods, but one who makes surveys for research purposes, analysis, opinion polls, rating data and any such similar work must register with and obtain a canvassing certificate from the Chief of Police of the borough prior to the commencement of any door to door interviewing within the borough, and where a lengthy application must be made for such certificate, and where such borough ordinance provides that the issuance of such certificate is discretionary with the Chief of Police, is such ordinance a prior restraint on Appellants' freedom of speech and as such invalid under the First and Fourteenth Amendments to the Constitution of the United States?

2. Where said ordinance which gives the Chief of Police discretion to refuse a canvassing certificate is recognized as unconstitutional on its face by the Supreme Court of New Jersey in that the discretionary power of the Chief of Police is a prior restraint on the liberty to communicate with the residents of the borough, may that same court prune this discretionary power from the ordinance and still hold Appellants guilty of violating the ordinance which was unconstitutional on its face when the Appellants were arrested and convicted?

3. Where a borough ordinance requires that one who is not in the business of selling goods but one who makes surveys for research purposes, analysis, opinion polls, rating data and any such similar work must register with and obtain a canvassing certificate from the Chief of Police of the borough before the commencement of any door to door interviewing within the borough, and where a lengthy application must be made for such certificate, and where the ordinance requires that the Chief of Police issue such certificate to each and every applicant for such certificate, is such ordinance a valid exercise of the State's Police Power, when the effect of such ordinance is to put a prior restraint on free speech?

4. Where a borough ordinance requires that one who is not in the business of selling goods but one who makes surveys for research purposes, analysis, opinion polls, rating data and any such similar work must register with and obtain a canvassing certificate from the Chief of Police of the borough prior to the commencement of any door to door interviewing within the borough, and where a lengthy application must be made for such certificate, is that ordinance, individually and collectively with all other such ordinances

of all other local communities, an undue burden on interstate commerce?

5. Where a borough ordinance requires that one who is not in the business of selling goods but one who makes surveys for research purposes, analysis, opinion polls, rating data and any such similar work must register with and obtain a canvassing certificate from the Chief of Police of the borough prior to the commencement of any door to door interviewing within the borough, and where a lengthy application must be made for such certificate; and where such ordinance exempts persons calling door to door on behalf of religious and charitable organizations from the requirements of applying for and obtaining such certificate, requiring in lieu thereof only private identification, does such discrimination violate the Equal Protection Clause of the Fourteenth Amendment to the Constitution?

Statutes Involved

Borough of Collingswood Ordinance No. 601. (Appendix F)

Statement

The Appellants, Donald S. Ringgold and John C. Ashhurst, residents of Pennsylvania, were engaged by a Pennsylvania subcontractor of a New York Corporation. On November 16, 1970, as part of a nationwide research program, they were collecting data from residents of Collingswood, New Jersey as to the radio stations to which they were listening. This information was later used to measure audience preferences among programs offered by radio sta-

tions in the area and the results published and distributed to subscribers.

Appellants were arrested in the Borough of Collingswood, New Jersey, and charged with violating Section 1 of Borough Ordinance No. 601 in that they "did canvass for a radio station survey without first registering to do so with the Chief of Police, in that they were canvassing in "A" building, Park View, Collingswood, N.J." (App. G).

When the Appellants were arrested they had already completed their interviews and were outside the building. They were arrested solely because of a technical violation of the requirements of Borough Ordinance No. 601 of the Borough of Collingswood. This ordinance requires a lengthy seven part application, a photograph of the interviewer, and a fee from any interviewer before such interviewer could peacefully call upon residents of the Borough of Collingswood, even though the residents consent to such interview and willingly and happily furnish information designed to provide data for research, analysis, opinion polls or similar purposes.

Section 10 of Ordinance No. 601 (App. F, pp. 4-5) exempts from all of the above requirements "Any person, organization or society or association of a charitable, religious, patriotic, philanthropic or community nature desiring to solicit or have solicited in its name, money, property or financial assistance for which no merchandise, wares or services are required . . ." (App. F, p. 4).

The ordinance draws a distinction between canvassers, solicitors and itinerant vendors of merchandise on the one hand, and those acting for charity, community and similar purposes who do not sell merchandise, wares or services. Unfortunately, it then arbitrarily classifies one who makes

surveys for research purposes, analysis, opinion polls, etc. who sells no merchandise, into the same classification with canvassers, solicitors and vendors of wares and merchandise (App. F, p. 1).

The claims that the arrest of Appellants violated and abridged their right to Freedom of Speech under the First and Fourteenth Amendments to the United States Constitution were raised in argument before the Municipal Court of the Borough of Collingswood, and these claims are acknowledged in the decision of that Court refusing to decide any new constitutional questions (App. D, p. 3).

When the case was heard *de novo* by the Camden County Court, the Appellants attacked the validity of the ordinance on three grounds: (a) that it is an undue burden on interstate commerce, (b) that it is an unconstitutional abridgment of freedom of speech; and (c) that it constitutes as to them a denial of equal protection of the law guaranteed by the Fourteenth Amendment.

The Camden County Court rejected all three of Appellants' claims of violation of Constitutional rights (App. C).

The ordinance was attacked by Appellants on the same three constitutional grounds in the Superior Court of New Jersey, Appellate Division, in brief and argument claiming: (a) that it is an undue burden on interstate commerce; (b) that it is an unconstitutional abridgment of freedom of speech; and (c) that it constitutes as to them a denial of equal protection of the law guaranteed by the Fourteenth Amendment. It was also attacked on the ground of an invalid exercise of Police Power. All these constitutional issues are referred to and specifically rejected in the opinion of the Appellate Division (App. B).

When this case appeared before the Supreme Court of New Jersey, Appellants challenged the ordinance on four constitutional grounds: (1) it is an invalid exercise of the police power as applied to them; (2) it imposes an undue burden on interstate commerce; (3) it abridges the First Amendment freedoms of speech and assembly; and (4) insofar as it sets different requirements for survey researchers from those for charitable, religious, civic and political organizations, it violates the equal protection clause of the Fourteenth Amendment. The opinion of the Supreme Court of New Jersey acknowledges these issues (App. A, p. 8).

The Supreme Court of New Jersey also acknowledged that the Appellants are challenging the constitutionality of the ordinance as it applied to their specific circumstances when it said:

> "Defendants' First Amendment argument is that, as applied to their research survey activity, no registration requirement whatsoever may constitutionally be imposed" (App. A, p. 15).
>
> "Ordinace No. 601 of the Borough of Collingswood, as construed herein, is valid" (App. A, p. 22).

This ruling of the Supreme Court of New Jersey sustaining the validity of the Local Ordinance, notwithstanding Appellants' claim that the statute as applied to them is repugnant to the Constitution, brings this case within 28 U.S.C. 1257 (2) which provides for review by the Supreme Court by appeal. *Jamison* v. *Texas,* 318 U.S. 413.

The Federal Questions Are Substantial

I.

The ordinance involved is similar to ordinances which are proliferating in communities all over the country. If, in fact, the ordinance infringes on Appellants' constitutional rights of free speech and assembly then this ordinance and many similar ones presently, and in the future will, illegally deny large numbers of persons in the United States their constitutional rights.

The Court has previously stated that a local ordinance requiring prior registration of door-to-door canvassers is unconstitutional as applied to a member of the sect of Jehovah's Witnesses who was proffering her opinion and views door-to-door. *Schneider* v. *State,* 308 U.S. 147. Likewise, this Court has previously stated that local communities may regulate purely commercial canvassers and solicitors. *Breard* v. *Alexandria,* 341 U.S. 622.

A substantial federal question is presented to this Court by this appeal as to the constitutionality of this local ordinance and many similar ordinances already enacted which now require the prior registration of door-to-door interviewers who are gathering opinions and preferences from the residents of a community. This issue must be viewed in the light of the First Amendment to the Constitution.

Is the solicitation of information, views and opinions entitled to the same protection which the dissemination of views and opinions received in *Schneider* v. *State, supra*?

Public opinion polls and research on consumer preferences are a large and vital factor of modern economic life.

The accuracy of these statistical surveys affects the efficiency of economic planning by industry. The enforcement of ordinances such as the one here attacked will affect the validity of statistical samples and seriously injure the efficiency of our economic community in planning the economic future of the country.

Even the pruned ordinance will, by its terms, prevent candidates for public office, local newspaper reporters, and all others interested in the opinions and views of residents of local communities from obtaining such opinions and views by calling door-to-door unless they first apply for and obtain a certificate from the Chief of Police. This is a substantial invasion of First and Fourteenth Amendment rights.

In view of the unanimous determination by the Supreme Court of New Jersey that this ordinance is valid, plenary consideration with briefs on the merits and oral argument is necessary to resolve the issues.

The issue of Freedom of Speech in this appeal is similar to the issue previously raised in *Schneider* v. *State,* 308 U.S. 147.

The ordinance of the Town of Irvington, New Jersey, prohibited the canvassing, soliciting, distribution of circulars or other material, and the calling from house to house in the Town of Irvington without first having reported to and received a written permit from the Chief of Police or the officer in charge of police headquarters. *Schneider* v. *State, supra,* 308 U.S. at 157. This prohibition is nearly identical with the prohibition of Ordinance No. 601, Section 1, of the Borough of Collingswood (App. F, p. 1).

As construed by the Supreme Court of New Jersey, the Irvington ordinance affected "all those, who, like the petitioner, desire to impart information and opinion to citizens at their homes." *Schneider* v. *State, supra,* 308 U.S. at 163. Similarly, the Supreme Court of New Jersey has declared with respect to Ordinance No. 601 of the Borough of Collingswood, that the "intention seems clear to address door-to-door activity on private property" (App. A, p. 16).

Of great importance in the decision of the Court in *Schneider* v. *State, supra,* was the discretionary power given to the Chief of Police to issue a permit or to withhold the issuance of a permit for such canvassing. Such discretionary power is also given to the Chief of Police in Ordinance No. 601, Section 8, (App. F, pp. 3-4). It is upon this discretionary power that the Court in *Schneider* v. *State, supra,* invalidated the ordinance of the Town of Irvington. It is upon this discretionary power that Ordinance No. 601 of the Borough of Collingswood also must fall.

The Court held in *Schneider* v. *State,* 308 U.S. at 160:

> "Although a municipality may enact regulations in the interest of the public safety, health, welfare or convenience, these may not abridge the individual liberties secured by the Constitution to those who wish to speak, write, print or circulate information or opinion."

It is precisely these protected activities which Appellants were engaged in when they were arrested. Appellants were engaged in door-to-door interviewing to obtain the opinion and preferences of the people of Collingswood. The concurring opinion of Judge Pashman (App. A, pp. 22-27) recognizes the substantial constitutional issue when he states of the ordinance:

> "(it) may be unconstitutional insofar as it sweeps in (inadvertently I suspect) protected speech, e.g., opinion polls conducted by elected officials for purposes of informing themselves of the views of their constituents or by newspaper seeking to determine the attitudes of the public on significant issues . . . . I would exclude such protected activities from coverage under Sections 1 and 2 of the Collingswood ordinance." (App. A, pp. 26-27).

Nor is it relevant that Appellants were being paid for their services. The Supreme Court of New Jersey admits that "at least some measure of First Amendment protection attaches here" (App. A, p. 15).

In addition to the stated purpose of the ordinance of preventing commercial "fraud, crime and unethical and dishonest business practices," (App. F, p. 2), the Supreme Court of New Jersey has emphasized "two primary purposes of the enactment: (1) deterring the use of soliciting and canvassing to gain access to homes for criminal purposes, and (2) maintaining quiet and privacy for residents of the Borough" (App. A, p. 10).

None of these purposes apply to Appellants. They were not engaged in the commercial sale of any goods or services, nor soliciting in any manner for any sums of money. Nor is either of the primary purposes stated by the Supreme Court of New Jersey sufficient as the rationale for infringing upon the Appellants' First Amendment rights.

> "Frauds may be denounced as offenses and punished by law. Trespasses may similarly be forbidden. If it is said that these means are less efficient and convenient than bestowal of power on police authorities to decide

what information may be disseminated from house to house, and who may impart the information, the answer is that considerations of this sort do not empower a municipality to abridge freedom of speech and press." *Schneider* v. *State,* 308 U.S. at 164.

The decision of the Supreme Court of New Jersey in the instant case is in derogation of the law as enunciated by this Court in *Schneider* v. *State, supra.* As *Schneider* v. *State, supra,* declared, the ordinance of the Town of Irvington, N. J. void and invalid on its face, so then must the Borough of Collingswood Ordinance No. 601 be declared void and invalid. The conviction of the Appellants must be reversed, and the erroneous decision of the Supreme Court of New Jersey must be corrected because this ordinance has deprived Appellants of their rights to freedom of speech.

The Supreme Court of New Jersey recognizing that the position of Appellants is sustained by *Thomas* v. *Collins,* 323 U.S. 516, states of that case:

> "There a state law which conditioned the right of a union organizer to solicit for membership upon the securing of a card was found to be a prior restraint upon the protected First Amendment right 'to make a public speech to enlist support for a lawful movement.' Id., 323 U.S. at 540" (App. A, pp. 19-20).

It attempts however to distinguish the case at bar from *Thomas* v. *Collins, supra,* by quoting therefrom a description of conduct not so protected:

> "Once the speaker goes further, however, and engages in conduct which amounts to more than the right

> of free discussion comprehends, as when he undertakes the collection of funds or securing subscriptions, he enters a realm where a reasonable registration or identification requirement may be imposed. [Id., 323 U.S. at 540]" (App. A, p. 20).

Appellants claim that the above quoted passage from *Thomas* v. *Collins, supra,* relied upon by the Supreme Court of New Jersey to distinguish it from the case at bar, fails to do so. The quoted passage enunciates the realm of activity for which a registration requirement may be valid. The activities of the Appellants did not fall into that realm. They did not go beyond free discussion. A person who makes surveys for research purposes, analysis, opinion polls, rating data and such similar work is no more a potential for a sense of unease; is no more a danger of strangers filtering through the community; and no more a danger of an invasion of privacy than a union organizer legitimately trying to organize workers.

II.

It appears that the Supreme Court of New Jersey, recognizing the Collingswood ordinance to be unconstitutional under the holding of this Court in *Schneider* v. *State, supra,* and anxious to sustain the ordinance for its express and implied purposes, decided to prune from the ordinance the objectionable discretion of the Chief of Police to deny a certificate to anyone who applied in accordance with the registration provisions of the ordinance. The conviction of Appellants under the ordinance, unconstitutional on its face, was then sustained under the subsequently pruned ordinance. A substantial federal question is raised by such a determination. May a statute, void on its face, which may

be disregarded with impunity, be altered so as to withstand a constitutional challenge and as so altered be effective retrospectively against those who correctly disregard the statute in its void form. The answer must be in the negative.

The Supreme Court of New Jersey, did not merely construe a statute so as to make it withstand a constitutional challenge. It deleted that part of the statute which rendered it void on its face. To apply this revised statute to Appellants violates Article I, Section 10 of the Constitution of the United States.

"No State shall . . . pass any . . . ex post facto Law . . ."

The ordinance as in existence at the time that Appellants were arrested and convicted was void on its face. This was recognized by the Supreme Court of New Jersey. As such it may be and was properly disregarded by Appellants. *Shuttlesworth* v. *Birmingham,* 394 U.S. 147.

The pruning was insufficient to sustain the conviction of Appellants.

> "It does not follow, however, that the severely narrowing construction put upon the ordinance by the Alabama Supreme Court in November of 1967 necessarily serves to restore constitutional validity to a conviction that occurred in 1963 under the ordinance as it was written." *Shuttlesworth* v. *Birmingham,* 394 U.S. at 155.

The conviction of the Appellants must be reversed.

III.

The attempted exercise of an invalid police power is also a substantial infringement of the constitutionally protected rights of Appellants.

The Supreme Court of New Jersey has concluded that "the intention of the ordinance is to protect against a sense of unease and dangers reasonably to be apprehended on account of strangers filtering through the community" (App. A, p. 8), which intent is not expressed in the enacted ordinance, but was derived from the stated purpose of "the general protection, health and welfare of the residents of the Borough of Collingswood" (App. F, p. 2).

It is an abuse of police power to require Appellants, who are engaged in the lawful pursuit of their profession as survey interviewers, to first apply for and obtain a certificate from the Chief of Police of the Borough of Collingswood on the excuse that criminals *may* masquerade as survey interviewers and in such masquerades *may* commit crimes.

For an ordinance based on police power to constitutionally abridge freedom of speech it must seek to remove a clear and present danger (*Schenck* v. *United States,* 249 U.S. 47) and it must be reasonably designed to accomplish its purpose (*Lawton* v. *Steele,* 152 U.S. 133).

> "Before the First Amendment Freedoms can be abridged 'the substantive evil must be extremely serious and the degree of imminence extremely high.'" *United States* v. *Dickinson,* 465 F.2d 496 at 507 quoting *Bridges* v. *California,* 314 U.S. 252, 263.
>
> "The danger must not be remote or even probable; it must immediately imperil." *United States* v. *Dickin-*

son, 465 F.2d 496 at 507. Quoting *Craig* v. *Harney,* 331 U.S. 367, 376.

The ordinance as applied against the Appellants is not justified by any immediate peril nor is the degree of imminence extremely high nor is the danger to be protected against clear and present.

If any foundation ever existed to sustain the use of police power to accomplish the "primary" purpose of "deterring the use of soliciting and canvassing to gain access to homes for criminal purposes" (Appendix A, p. 10), that foundation is demolished by the pruning ordered by the Supreme Court of New Jersey which declared invalid Section 8 of the ordinance (App. A, p. 18).

Section 8 refers to possible denial of the registration certificate to an applicant by the Chief of Police. If there be no discretion on the part of the Chief of Police to deny a certificate to any applicant, including criminals, the ordinance fails totally even in its purported purpose. Criminals of every type must be granted certificates. The ordinance then infringes on protected constitutional rights of Appellants, and fails to cure the evil to which it is addressed. In fact, a criminal with a certificate which must be issued to him by the Chief of Police may now be able to gain access which would otherwise be denied him.

IV.

The ordinance imposes an undue burden on interstate commerce. This burden is particularly substantial as applied to Appellants.

Appellants, engaged in their interviewing, may make only a few calls in each locality to obtain a statistical sample. Appellants are compensated according to the number of interviews completed. A heavy burden is imposed on Appellants if they are required to make a long application for a certificate from the Chief of Police in each locality for only a few door-to-door interviews. More time might be required to obtain certificates than to conduct surveys. It is insufficient to say that the Courts should not speculate as to the possible burden of similar ordinances in other municipalities and express the hope that cooperation among communities would reduce any cumulative effect (App. A, p. 12). See *Clifton* v. *Weber,* 84 N.J. Super. 333, 339.

As to the Appellants, the ordinance is an undue burden on interstate commerce.

V.

The Appellants have been denied the equal protection of the laws as guaranteed in the Fourteenth Amendment to the Constitution in that Appellants are required to apply for and obtain a canvassing certificate and this requirement is waived for "Any person, organization or society or association of a charitable religious, patriotic, philanthropic or community nature desiring to solicit or have solicited in its name money, property or financial assistance for which no merchandise, wares or services are required" (App. F, p. 4).

As to Appellants who do not offer merchandise, wares or services this discrimination denies them the equal protection of the laws.

CONCLUSION

For the reasons stated, Appellants respectfully submit that the questions presented in this appeal are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution.

Respectfully submitted,

EMANUEL GREENBERG
Counsel for Appellants

APPENDICES

APPENDIX A

Opinion in the Supreme Court of New Jersey

BOROUGH OF COLLINGSWOOD, PLAINTIFF-RESPONDENT, v. DONALD RINGGOLD AND JOHN C. ASHHURST, DEFENDANTS-APPELLANTS.

Argued November 20, 1973—Decided January 24, 1975.

SYNOPSIS

Defendants were convicted in the municipal court of violating ordinance prohibiting canvassing or soliciting without first registering with chief of police and procuring a permit. The Camden County Court, in de novo hearing, upheld convictions and defendants appealed. The Superior Court, Appellate Division, affirmed and defendants appealed. The Supreme Court, Clifford, J., held that the ordinance was not an invalid exercise of police power as applied to defendants who were canvassing for purpose of surveying listener preferences for radio stations; the ordinance did not impose an undue burden on interstate commerce, except insofar as it required applicants to state days, dates and route of business and required them to deposit registration card after each day's work; that the ordinance did not abridge First Amendment right of freedom of speech, except insofar as it imposed no standards to aid in determining when permits might issue in face of prior conviction of applicant or reported unethical business practices; and that the ordinance did not violate equal protection clause by setting different requirements for survey researches from those for charitable, religious, civic and political organizations.

Affirmed.

Pashman, J., concurred in result only and filed opinion.

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1. Municipal corporations ⇐122(2)
   Municipal enactment is presumed valid.

Appendix A
Opinion

2. Municipal corporations ⇐122(2)

Municipal enactment may be held invalid only if presumption of validity is overcome by clear showing that it is arbitrary or unreasonable.

3. Municipal corporations ⇐122(2)

Presumption of validity of municipal enactment is overcome if it is constitutionally defective on its face.

4. Licenses ⇐6(13)

As long as requirements imposed by ordinance requiring advance registration of persons who solicit or canvass from house to house are substantially related to public good which it seeks to advance, police power of state is not overextended and act is within scope of grant of that power embodied by statute providing that municipality may make ordinances, not contrary to laws, as it may deem necessary and proper for good government, order and protection of persons and property and for preservation of public health, safety and welfare of municipality and its inhabitants. *N. J. S. A.* 40:48–2.

5. Licenses ⇐7(1)

Deterring use of soliciting and canvassing to gain access to homes for criminal purposes and maintaining quiet and privacy for residents of municipality are both "legitimate objects" of municipal concern, for purposes of determining validity of ordinance prohibiting canvassing or soliciting without first registering with chief of police and procuring a permit. *N. J. S. A.* 40:48–2.

6. Licenses ⇐7(1)

Borough of Collingswood's ordinance prohibiting canvassing or soliciting without first registering with chief of police and procuring a permit requires a ministerial issuance and does not permit any exercise of discretion whatsoever and is a valid exercise of police power.

Appendix A
Opinion

7. Commerce ⇐67

If regulation of soliciting is a social regulation designed to protect local interests, different considerations apply in determining whether the burden on interstate commerce is undue or discriminatory than apply when the regulation is essentially economic in purpose and effect.

8. Commerce ⇐67

Fact that ordinance regulating canvassing did not discriminate against out-of-state canvassers to the favor of local or in-state businesses, but applied to "all persons," was not determinative of issue of whether as legitimate social regulation the ordinance was a burden on interstate commerce.

9. Commerce ⇐67

Municipalities have authority to regulate the business of soliciting and canvassing to protect the social well-being of community, even though such regulations touch upon interstate commerce.

10. Commerce ⇐67

Ordinance prohibiting canvassing or soliciting without first registering with police and procuring permit did not impermissibly burden interstate commerce insofar as it required registrant to give name, age and physical description, home and local address, name and address of organization for whom solicitation was made, description of nature of business, photographs of registrant, statement as to prior convictions, and descriptions of automobile and required registrant to carry registration certificate, but requirement that registrant state days, dates and route of business in municipality and deposit registration card after each day's work were restraints which cumulatively burdened interstate commerce.

11. Constitutional law ⇐90.1(1)

Speech is not unprotected by Constitution merely because it is uttered by a corporation as opposed to an individ-

ual or because it serves economic purposes of the corporate entity. *U. S. C. A. Const.* Amends. 1, 14.

12. Licenses ⇦6(13)

Municipality may license only purely commercial soliciting and condition the license upon specified standards relating to applicant's fitness to do business.

13. Licenses ⇦7(1)

Ordinance prohibiting canvassing or soliciting without first registering with chief of police and procuring a permit was invalid insofar as it authorized permit to be denied in event of prior conviction of applicant of crime, misdemeanor or disorderly conduct offense or reported unethical business practices, but imposed no standards to aid chief of police in deciding whether to grant permit or borough commissioners on review of chief's decision and gave chief and commissioners unlimited discretion. *U. S. C. A. Const.* Amends. 1, 14.

14. Licenses ⇦7(1)

Ordinance which regulates canvassing or soliciting by requiring registration is valid as an identification device.

15. Constitutional law ⇦90.1(1)

Licenses ⇦7(1)

Identification requirement of ordinance prohibiting canvassing or soliciting without first registering with chief of police and procuring a permit was sufficiently reasonable and neutral to withstand First Amendment constitutional attack and was legitimate tool in hands of municipality, particularly as applied to conduct of defendants engaged in canvassing house-to-house in connection with survey of listener preferences for radio stations. *U. S. C. A. Const.* Amend. 1.

16. Licenses ⇦7(2)

Ordinance prohibiting canvassing or soliciting without first registering with chief of police and procuring a permit did not establish impermissible classifications of house-to-house canvassers by fact that it imposed less stringent requirements on solicitations by members of charitable, religious, patriotic, philanthropic, or community organizations than was imposed on peddlers of wares or on surveyors, inasmuch as municipality's interest in not unduly burdening local community solicitation efforts justified minor differences as to amount of information required concerning identification of solicitor. *U. S. C. A. Const.* Amend. 14.

Mr. Emanuel Greenberg, of the New York bar, argued the cause for defendants-appellants (*Mr. Bryan B. McKernan,* attorney).

Mr. James A. Perrin, Municipal Prosecutor, argued the cause for plaintiff-respondent.

The opinion of the court was delivered by

CLIFFORD, J. The issue raised by this appeal is the constitutionality of the Borough of Collingswood's Ordinance No. 601, prohibiting canvassing or soliciting without first registering with the Chief of Police and procuring a permit.

In the municipal court defendants were convicted of violating the ordinance in question. The Camden County Court, in a *de novo* hearing on the record pursuant to *R.* 3:23-8(a), upheld the convictions, concluding that the ordinance was valid "both generally and as applied to these defendants." In an unreported *per curiam* opinion the Appellate Division affirmed for the reasons stated by the County Court. A substantial constitutional question having been raised, the appeal to this Court is as of right. *R.* 2:2-1(a)(1). We affirm.

Defendants were employed by a Pennsylvania subcontractor of Surveys Unlimited, a New York corporation, for the purpose of surveying listener preferences for radio stations. At approximately 9:30 P.M. on the evening of March 16, 1970, they went to the Parkview Apartments in Collingswood to interview residents there. They had not obtained a permit as required by the ordinance.

Appendix A
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Mrs. Jeanne Powell, a resident of the Parkview Apartments, agreed to be interviewed. After answering a number of questions relating to radio station, television channel, newspaper and and coffee preferences, she became suspicious in light of the many inquiries concerning the times when she viewed or listened to programs. When the interviewer, defendant Ringgold, asked for her telephone number, her suspicions increased and she refused to provide it. The interview took place at the door to the Powell apartment and lasted about 15 minutes. During this time Mrs. Powell noticed a second man going from door to door in the building. Despite Mrs. Powell's suspicions, it is not argued here that the interview was anything but courteous, nor that defendants were attempting to sell anything, nor that they were carrying out any criminal or fraudulent schemes.

However, when Ringgold completed his interview and departed, Mrs. Powell called the police who quickly located defendants outside the apartment building. Upon being questioned by the police, defendants explained what they were doing and admitted having no permit, saying that they had been unaware of the permit requirement. They were then charged with the violation forming the basis of these proceedings.

The relevant ordinance reads in pertinent part as follows:

Section 1. No person except as provided herein shall canvass, solicit, distribute circulars or other matter, or call from door to door, or place to place, in the Borough of Collingswood without first registering with the Chief of Police, or in his absence, the officer in charge of the police department.

Section 2. * * * For the purpose of this ordinance a canvasser or solicitor shall also be deemed to be one who is not in the business of selling goods, but one who makes surveys for research purposes, analysis, opinion polls, rating data and any such similar work by which of its nature involves a door to door, or place to place activity, and shall include persons going from door to door or place to place for the purpose of contributions, donations, or alms, for any persons or organization.

Section 3. The purpose of this ordinance is to prevent fraud, crime and unethical and dishonest business practices, and for the general

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protection, health and welfare of the residents of the Borough of Collingswood.

Section 4. Each registrant shall, at the time of registering, file with the Chief of Police, an application in writing which shall give the following information:

(a) Name, age and physical description of applicant.

(b) Complete permanent home and local address of applicant.

(c) Name and address of the organization or person for whom solicitation is being made.

(d) Description of the nature of the business and the goods, services, or wares to be sold, and sufficient information to determine whether or not the business he is to transact is interstate or intrastate commerce.

(e) Two (2) photographs of the applicant which shall be approximately 2½ inches by 2½ inches in size showing the head and shoulders of the applicant in a clear and distinguishing manner.

(f) The days, dates, and route of his business in the Borough of Collingswood (which shall be between the hours of 9:00 A.M. and 5:00 P.M.).

(g) A statement as to whether or not the applicant has been convicted of a crime, misdemeanor, or disorderly conduct offense, where and when so convicted, the nature of the offense and the penalty, if any.

(h) The make, model, year, color and license plate number of automobiles used by the applicant during the period of solicitation within the Borough, and the number of his driver's license and the state of issuance.

* * * * * * * * *

Section 7. Each registrant shall carry the registration certificate at all times when in the Borough, and shall exhibit it to any citizen or police officer upon request. At the conclusion of each day's canvassing or soliciting the registration card shall be deposited with the Chief of Police.

Section 8. In the event an application for canvassing or soliciting is disapproved to [sic] the Chief of Police, for reasons of reported unethical business practices, or a previous conviction for a crime, the applicant may appeal to the Borough Commissioners, who shall set a time and place for a hearing, which hearing shall be held within ten days after appeal is taken by applicant, at which hearing applicant will be given an opportunity to present his reasons why the license should be issued. The decisions of the Borough Commissioners shall be final.

Section 9. * * * (b) No person subject to the provisions of this ordinance shall canvass, solicit or distribute circulars or other matter except during the hours of 9:00 A.M. and 5:00 P.M. Monday through Saturdays.

Section 10. Any person, organization or society or association of a charitable religious, patriotic, philanthropic or community nature

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desiring to solicit or have solcited [sic] in its name money, property or financial assistance for which no merchandise, wares or services are required shall be exempt from Section 4 of this ordinance provided there s[sic] filed with the Chief of Police an application in writing giving the following information:

(1) Names of solicitors, and purpose or cause for which solicitation is being made.

(2) Names and addresses of the officers of the organization.

(3) Names and addresses of the agents or representatives who will solicit, canvass or distribute literature in the Borough.

(B) Each solicitor for such organization, society, or association shall carry proper identification, and shall display same upon request.

* * * * * * * *

Section 12. Any part or parts of this ordinance, if ever declared to be invalid, shall in no way or manner affect the validity of all remaining part, or parts of this ordinance, which shall continue in full force and effect.

Defendants challenge the ordinance on four constitutional grounds: (1) it is an invalid exercise of the police power as applied to them; (2) it imposes an undue burden on interstate commerce; (3) it abridges the First Amendment freedoms of speech and assembly; and (4) insofar as it sets different requirements for survey researchers from those for charitable, religious, civic and political organizations, it violates the equal protection clause of the Fourteenth Amendment.

We take up these contentions in that order. Our discussion of them amplifies our conclusion that the intention of the ordinance is to protect against a sense of unease and dangers reasonably to be apprehended on account of strangers filtering through the community. To give effect to that intention, since doubtless the municipal authorities would want the enactment to remain to the extent that it may, we have performed such judicial pruning as will render the ordinance constitutional. *State v. Zito*, 54 *N. J.* 206, 218 (1969). See also *State v. Profaci*, 56 *N. J.* 346, 349–350 (1970); *State v. DeSantis*, 65 *N. J.* 462, 472–473 (1974).

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I

[1–3] In evaluating defendant's position we are mindful of the traditional presumption of validity in favor of a municipal enactment, *e. g., Moyant v. Paramus*, 30 *N. J.* 528, 534 (1959), overcome by a showing that the ordinance is arbitrary or unreasonable, *Kozesnik v. Montgomery Twp.*, 24 *N. J.* 154, 167 (1957), or that it is constitutionally defective on its face. *E. g., City of Elizabeth v. Sullivan*, 100 *N. J. Super.* 51, 55, 58–59 (Cty. Ct. 1968).

[4] Constitutional infirmities aside, it is clear that a municipality may require advance registration of persons who solicit or canvass from house to house. *Mogolefsky v. Schoem*, 50 *N. J.* 588, 595 (1967); *Clifton v. Weber*, 84 *N. J. Super.* 333, 336 (App. Div. 1964), aff'd, 44 *N. J.* 266 (1965); *Moyant v. Paramus, supra*, 30 *N. J.* at 544. As long as the requirements imposed by such an ordinance are substantially related to the public good which it seeks to advance, the police power of the state has not been over-extended and the act is within the scope of the grant of that power embodied in *N. J. S. A.* 40:48–2. See *Schmidt v. Board of Adjustment of City of Newark*, 9 *N. J.* 405, 416 (1952); *Toms River Publishing Co. v. Manasquan*, 127 *N. J. Super.* 176, 181 (Ch. Div. 1974).

Defendants base their argument of invalid exercise of police power on a narrow reading of the ordinance. They interpret it as seeking to guard against only essentially fraudulent business practices. As applied to them they believe the ordinance to be overbroad and to impose upon their efforts strictures not reasonably related to the evil sought to be prevented. Their position is that the residents of Collingswood cannot fall victim to unethical business practices because defendants are not engaged in the business of selling; rather, they are conducting a market survey, the gathering of a "product" instead of the dispensing of one.

[5] However, Section 3 of the ordinance states a somewhat broader purpose: "to prevent fraud, crime and unethical and dishonest business practices *and* for the general

protection, health and welfare of the residents of the Borough of Collingswood" (emphasis added). Thus, defendants have overlooked two primary purposes of the enactment: (1) deterring the use of soliciting and canvassing to gain access to homes for criminal purposes, and (2) maintaining quiet and privacy for residents of the Borough. Both are "legitimate objects" of municipal concern. *Mogolefsky v. Schoem, supra,* 50 *N. J.* at 595.

[6] The means employed are neither unrelated to the objectives of the ordinance nor are they unreasonable. First, the identification requirements discourage resort to the subterfuge of canvassing as a means of furthering criminal purposes, whether immediate or sometime in the future. *Cf. Dziatkiewicz v. Maplewood,* 115 *N. J. L.* 37, 42 (Sup. Ct. 1935). Second, the registration certificate obtained by a canvasser affords a ready means of identification to both the resident and the police and serves to allay concern over the presence of an unfamiliar face in a neighborhood or on a doorstep. See *Mogolefsky v. Schoem, supra,* 50 *N. J.* at 595. Third, compliance is left mainly with the registrant who supplies the required information. While the Borough has circumscribed severely the discretion to refuse a permit, we interpret the ordinance, much as did the County Court, as permitting no exercise of discretion whatsoever and thus as requiring a ministerial issuance. See III, *infra.*

Defendants' challenge to the exercise of police power is misplaced; consequently, it is rejected.

II

Defendants next argue that requiring them to supply Collingswood police with detailed information has the cumulative effect, in light of the multiplicity of similar ordinances in other towns, of placing an unconstitutional burden on interstate commerce. However, not all burdens on interstate commerce are prohibited. The question here is whether the burden is undue or discriminatory. See, *e. g.,*

Nippert v. City of Richmond, 327 *U. S.* 416, 425, 66 S. Ct. 586, 590, 90 *L. Ed.* 760, 765 (1946).

[7] Where a regulation is not essentially economic in purpose and effect, as in *Nippert, supra,* but is instead a social regulation designed to protect local interests, different considerations apply. *Breard v. City of Alexandria,* 341 *U. S.* 622, 638, 71 S. Ct. 920, 930, 95 *L. Ed.* 1233, 1246 (1951). In *Breard* the Supreme Court distinguished social from economic interests as a rationale for burdening interstate commerce, and declined to void, on the basis of the commerce clause, an ordinance which declared the practice of soliciting or peddling from house to house without first obtaining permission from the individual homeowners to be a misdemeanor. The Court stated that the ordinance was justified by the city's "duty of protecting its citizens against the practices deemed subversive of privacy and of quiet." *Id.* at 640, 71 S. Ct. at 931, 95 *L. Ed.* at 1246–1247. It is just such local concerns that the Collingswood ordinance addresses.

[8] However, as a legitimate social regulation the Collingswood ordinance must still be examined for its cumulative effect on interstate commerce. See *Moyant v. Borough of Paramus, supra,* 30 *N. J.* at 550–551. The ordinance at hand does not discriminate against out-of-state canvassers to the favor of local or in-state businesses, for it applies to "all persons." But this is not determinatve of the issue. In *Nippert v. City of Richmond, supra,* an annual license tax of a fixed amount (plus a percentage determined from prior year's activity) was found to be invalid despite its stated similar treatment of local and out-of-state commerce. The Court found that the ordinance in question discriminated in favor of local businesses because of the general or cumulative burden imposed on interstate concerns who found it necessary to transact business in numerous localities, each of which could potentially enact a fixed license tax. See *id.,* 327 *U. S.* at 429–431, 66 S. Ct. at 592–594, 90 *L. Ed.* at 767–769. The effect of such multiplicity could work an exclusion on interstate commerce through an unacceptable financial bur-

den and consequent business discouragement. A similar conclusion was reached in *Moyant v. Borough of Paramus, supra,* which dealt with registration requirements of a $1000 bond, a $25 license tax, and a physician's certificate. Both cases, however, are distinguishable from the present one in that they imposed financial restrictions, having an immediate and obvious impact on interstate commerce.

[9] New Jersey cases have recognized the authority of municipalities to regulate the business of soliciting and canvassing to protect the social well-being of a community even though such regulations touch upon interstate commerce. For example, *Mount Holly Twp. v. Omar,* 51 *N. J. Super.* 201 (Cty. Ct. 1958), upheld a simple registration ordinance where the applicant was required to give his name, a photograph, other identifying matter and to pay a fee of $.75. In *State v. Mauer,* 75 *N. J. Super.* 90 (Cty. Ct. 1962), a more onerous enactment was invalidated on the grounds of a three-day waiting period and the potential cumulative burden compliance therewith would present when viewed in the light of requirements of other ordinances in surrounding communities. This position, however, was impliedly rejected in the later case of *Clifton v. Weber, supra,* where the Appellate Division refused to speculate as to the possible burden of similar ordinances in other municipalities and expressed the hope that co-operation among communities would reduce any cumulative effect. 84 *N. J. Super.* at 339. There, a conviction under an ordinance which required a $3 fee and an investigation period which took from 10 to 21 days was upheld.

[10] Compared with the comprehensive registration requirement sustained in *Clifton v. Weber, supra,* and those struck down in *Moyant v. Borough of Paramus, supra,* and *State v. Mauer, supra,* the Collingswood ordinance presents a picture of restraint; no fee is involved,[1] no fingerprinting

[1]We were informed by the municipal prosecutor at oral argument that while there is no fee applicable by the terms of Ordinance No. 601, the Borough does have a general fee ordinance which would apply

is necessary, and no investigatory period is established. We find, however, that the requirements of Section 4(f) of the ordinance relating to "the days, dates and route of * * * business" and the requirement of Section 7 respecting deposit of the registration card after each day's work are restraints which cumulatively burden interstate commerce. We invalidate the ordinance as to these provisions but find that the remaining requirements are neither undue nor discriminatory, and that as amended the ordinance survives so much of the challenge as is based on an impermissible burden on interstate commerce.

III

A more troublesome question presented by this appeal springs from the defendants' challenge alleging infringement of their rights under the First Amendment, made applicable to the states by the Fourteenth Amendment. On this issue we find the parties' positions at opposite extremes. The Borough contends that defendants were entitled to virtually no First Amendment protection at all under the circumstances, whereas defendants assert their activities were absolutely protected and not constitutionally susceptible of any infringement.

We attend first to the Borough's argument, which is to the effect that no First Amendment protection was afforded because defendants' occupation involved "commercial speech." See *Valentine v. Chrestensen,* 316 *U. S.* 52, 62 S. Ct. 920, 86 *L. Ed.* 1262 (1942)[2]; *cf. Allen v. McGovern,* 12 *N. J. Misc.*

to activities conducted under the ordinance in question; that the Borough officials had never collected any fee from registrants under this ordinance; and that in any event the general fee ordinance would be amended to render it inapplicable to those affected by Ordinance No. 601.

[2]Since *Valentine* the reported cases generally resist classifying as commercial any form of speech other than advertisements. *E. g., Pittsburg Press Co. v. Pittsburgh Comm. on Human Relations,* 413 *U. S.* 376, 93 S. Ct. 2553, 37 *L. Ed.* 2d 669 (1973); *United States v. Bob*

12 (Sup. Ct. 1933). While it is apparent that the ordinance, in part at least, addresses business-oriented pursuits, we believe it would be an unwarranted extension of the commercial speech doctrine to classify defendants' communication efforts wholly within that concept, thereby according them minimal constitutional protection or none at all.

[11] It is true that the speech involved here has commercial overtones since the surveys taken in Collingswood were to be sold for a profit and the employer of the two defendants is a commercial organization. Nevertheless, it is equally clear that speech is not unprotected merely because it is uttered by a corporation as opposed to an individual and because it serves the economic purposes of the corporate entity. See, *e. g., Thomas v. Collins,* 323 *U. S.* 516, 531, 65 S. Ct. 315, 323, 89 *L. Ed.* 430, 441 (1945); *cf. Breard v. Alexandria, supra,* 341 *U. S.* at 642, 71 S. Ct. at 932, 95 *L. Ed.* at 1248. See generally Redish, "The First Amendment in the Marketplace: Commercial Speech and Values of Free Expression," 39 *Geo. Wash. L. Rev.* 429 (1971). In any event we need not decide this case on the dubious distinction[3]

Lawrence Realty, Inc., 474 *F.* 2d 115, 121 (5th Cir.), *cert.* den., 414 *U. S.* 826, 94 S. Ct. 131, 38 *L. Ed.* 2d 59 (1973); *Banzhaf v. FCC,* 132 *U. S. App. D. C.* 14, 405 *F.* 2d 1082 (D. C. Cir. 1968), *cert.* den. 396 *U. S.* 842, 90 S. Ct. 50, 24 *L. Ed.* 2d 93 (1969); *Capital Broadcasting Co v. Mitchell,* 333 *F. Supp.* 582 (D. D. C. 1971), aff'd *sub. nom. Capital Broadcasting Co. v. Kleindienst,* 405 *U. S.* 1000, 92 S. Ct. 1289, 31 *L. Ed.* 2d 472 (1972); *United States v. Hunter,* 459 *F.* 2d 205 (4th Cir), *cert.* den., 409 *U. S.* 934, 93 S. Ct. 235, 34 *L. Ed.* 2 189 (1972); *Weaver v. Jordan,* 64 Cal. 2d 235, 49 *Cal. Rptr.* 537, 411 *P.* 2d 289, *cert.* den., 385 *U. S.* 844, 87 S. Ct. 49, 17 *L. Ed.* 2d 75 (1966); *United Advertising Corp. v. Borough of Raritan,* 11 *N. J.* 144 (1952); *Passaic Daily News v. Blair,* 63 *N. J.* 474 (1973); *Supermarkets General Corp. v. Sills,* 93 *N. J. Super.* 326 (Ch. Div. 1966). But see, *e. g., Hood v. Dun & Bradstreet, Inc.,* 486 *F.* 2d 25 (5th Cir. 1973); *George R. Whitten, Jr., Inc. v. Paddock Pools, etc., Inc.,* 424 *F.* 2d 25 (1st Cir. 1970); *Holiday Magic v. Warren,* 357 *F. Supp.* 20 (E. D. Wis. 1973).

[3]Justice Douglas has said that "[t]he [Chrestensen] ruling was casual, almost offhand. And it has not survived reflection." *Cammarano v. United States,* 358 *U. S.* 498, 514, 79 S. Ct. 524, 534, 3

between commercial and non-commercial speech, it being clear, as indicated, that at least some measure of First Amendment protection attaches here.

Defendants' First Amendment argument is that, as applied to their research survey activity, no registration requirement whatsoever may constitutionally be imposed. Further, they argue that as a consequence of its overbreadth the ordinance permits Borough officials to deny registration cards to canvassers and solicitors for arbitrary or otherwise improper reasons and that this submission to the undefined discretion of municipal authorities results in an abridgment of their right to freedom of speech.

Parenthetically, we note that defendants are not before this Court challenging the prospective validity of the ordinance, nor are they appealing from a refusal of Collingswood Borough to issue a registration card, nor does it appear from the record that they attempted to register as required. While concededly Ordinance No. 601 is not a model of clarity, nevertheless we conclude that it is sufficient on its face so that it could not properly be ignored with impunity by these defendants. See *Poulos v. New Hampshire,* 345 *U. S.* 395, 73 S. Ct. 760, 97 *L. Ed.* 1105 (1953); *Walker v. Birmingham,* 388 *U. S.* 307, 87 S. Ct. 1824, 18 *L. Ed.* 2d 1210 (1967). Defendants' conduct clearly falls within the proscription of this ordinance despite whatever infirmities therein might be exposed by judicial scrutiny, which defects we undertake to excise. *Cf. Broadrick v. Oklahoma,* 413 *U. S.* 601, 93 S. Ct. 2908, 37 *L. Ed.* 2d 830 (1973).

We first consider the seemingly broad sweep of activities embraced by Section 1: "no persons * * * shall * * * distribute circulars or other matter, or call from door to door, or place to place, in the Borough of Collingswood without first registering * * *." Were this Section read in a vacuum, it might conceivably be interpreted to include a re-

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L. Ed. 2d 462, 472 (1959) (concurring opinion). But *cf. Lehman v. City of Shaker Heights,* 418 *U. S.* 298, 305, 94 S. Ct. 2714, 2718, 41 *L. Ed.* 2d 770, 778 (1974) (concurring opinion).

striction on canvassing, soliciting or distributing non-commercial materials in a public place by requiring prior registration — a legislative objective of doubtful validity. See *Lovell v. Griffin*, 303 *U. S.* 444, 58 S. Ct. 666, 82 *L. Ed.* 949 (1938); *Strasser v. Doorley*, 432 *F.* 2d 567, 569 (1st Cir. 1970) ("In the face of these burdens upon the exercise of first amendment rights, defendants point to no governmental interest of any importance that would be served by registration and identification."); *Wulp v. Corcoran*, 454 *F.* 2d 826 (1st Cir. 1972); *City of Elizabeth v. Sullivan*, *supra*; *compare Cantwell v. Connecticut*, 310 *U. S.* 296, 60 S. Ct. 900, 84 *L. Ed.* 1213 (1940), with *Thomas v. Collins*, *supra*. Read as a whole, however, the ordinance clearly delimits the proscribed activity. Thus, the title declares its purpose "to further control canvassing and soliciting;" Sections 3 and 8 have a business or commercial orientation; and Section 10 deals with non-commercial organizations specifically soliciting "money, property or financial assistance for which no merchandise * * * [is] required." Further, Section 2 narrowly describes the place-to-place nature of the activity which the ordinance seeks to regulate. We have declared the ordinance's purposes to be deterrence of gaining access to homes for criminal purposes and maintenance of quiet and privacy. The intention seems clear to address door-to-door activity on private property. "conduct of one limited kind." *Adderley v. Florida*, 385 *U. S.* 39, 42, 87 S. Ct. 242, 244, 17 *L. Ed.* 2d 149, 153 (1966). We adopt this "readily apparent construction." *Dombrowski v. Pfister*, 380 *U. S.* 479, 491, 85 S. Ct. 1116, 1123, 14 *L. Ed.* 2d 22, 31 (1965).

As thus construed the Collingswood ordinance undertakes generally to regulate activity which cannot be characterized as "pure speech." The enactment's focus on the door-to-door aspect, while assuredly not removing defendants' activity from the ambit of all First Amendment concerns, nevertheless shifts the emphasis to "conduct," traditionally surrounded with lesser protection than "pure speech." *Cox v.*

Louisiana, 379 *U. S.* 536, 555, 85 *S. Ct.* 453, 465, 13 *L. Ed.* 2d 471, 484 (1965). We repeat, this is not to say that no protection at all may be afforded or that an absolute prohibition of defendants' activities would be tolerated. Obviously that is not the purpose of this ordinance.

Persons desiring to canvass or solicit from door to door within the Borough may do so simply by identifying themselves to the Chief of Police. This is acomplished by providing information easily obtainable by the applicant. In no sense do the identification requirements "slip from the neutrality of time, place, and circumstance into a concern about content." *Police Dept. v. Mosley*, 408 *U. S.* 92, 99, 92 S. Ct. 2286, 2292, 33 *L. Ed.* 2d 212, 219 (1972) quoting from Kalven, "The Concept of the Public Forum: Cox v. Louisiana," 1965 *Sup. Ct. Review* 29). *Cf. Broadrick v. Oklahoma*, *supra*, 413 *U. S.* at 614–615, 93 S. Ct. at 2917–2918, 37 *L. Ed.* 2d at 841. The enactment does not strike at the heart of First Amendment protected activity, see *Lovell v. Griffin*, *supra*, 303 *U. S.* at 451, 58 S. Ct. at 668, 82 *L. Ed.* at 953, by conferring in licensing officials a "virtually unbridled and absolute power to prohibit" such activity. *Shuttlesworth v. Birmingham*, 394 *U. S.* 147, 150, 89 S. Ct. 935, 938, 22 *L. Ed.* 2d 162, 167 (1969).[4]

On close inspection, however, we do conclude that in one regard the ordinance undertakes to impose too broad discretion in the Chief of Police and the Borough Commis-

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[4]Ordinances similar in many respects to the Collingswood enactment have been voided because of an improper grant of discretionary power in licensing officials. *E. g.*, *Schneider v. Irvington*, 308 *U. S.* 147, 164, 60 S. Ct. 146, 152, 84 *L. Ed.* 155, 166 (1939); *Evans v. LePore*, 26 *N. J. Misc.* 215, 216–217 (Sup. Ct. 1948). See *Cantwell v. Connecticut*, *supra*, 310 *U. S.* at 306, 308, 60 S. Ct. at 904, 905, 84 *L. Ed.* at 1219; *cf. Staub v. Baxley*, 355 *U. S.* 313, 322, 78 S. Ct. 277, 282, 2 *L. Ed.* 2d 302, 311 (1958); *Edgewater v. Cox*, 123 *N. J. L.* 212, 214–215 (E. & A. 1939): But see *Hughes v. Detroit*, 217 *Mich.* 567, 187 *N. W.* 530 (1922); *City of Washburn v. Ellquist*, 242 *Wis.* 609, 9 *N. W.* 2d 121, 10 *N. W.* 2d 292 (1943); *Village of Mogadore v. Coe*, 29 *Ohio O.* 2d 44, 197 *N. E.* 2d 570 (Ct. C. P. 1963).

sioners. Section 4 and Section 8 deal with conviction of a "crime, misdemeanor, or disorderly conduct offense." Section 4 requires the applicant to give a written statement of such conviction, disclosing the nature of the offense, where and when the conviction occurred, and the penalty. Section 8 provides that in the event an application is disapproved by the Chief of Police because of conviction or reported unethical business practices, then an appeal may be taken to the Borough Commissioners. Thus, the ordinance does not mandate denial for certain particularized egregious conduct nor furnish any clue as to what standards the Chief may bring to bear on the issue of when to deny or when to grant a permit in the face of a conviction or reported unethical business practices. His discretion in this respect is entirely — and therefore improperly — unlimited. The same is true with respect to the Borough Commissioners in their review of the Chief's decision on appeal.

[12] A municipality may very well wish to license only purely commercial soliciting and condition the license upon specified standards relating to the applicant's fitness to do business. Just such an enactment was before this Court in *Moyant v. Paramus, supra,* where the norm of "satisfactory" as to an applicant's "character and business responsibility" was found to be "minimally sufficient." *Id.,* 30 *N. J.* at 554.

[13] Here, however, we are confronted with an ordinance that goes beyond commercial soliciting and imposes no standards to aid in determining when a permit may issue in the face of a conviction or reported unethical business practices. We therefore declare Section 8 to be invalid.

[14] In the final analysis all we are faced with in Ordinance No. 601 is an "identification device." Resort to this method of serving the interests sought to be protected here has received ample support in the dicta of prior decisions; our independent evaluation of the policy considerations therein convinces us that such a device is valid.

For example, in *Cantwell v. Connecticut, supra,* the United States Supreme Court explicitly stated that

> [w]ithout a doubt a state may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent. [*Id.* 310 U. S. at 306, 60 S. Ct. at 904, 84 *L. Ed.* at 1219 (footnote omitted)].

And in the later case of *Martin v. City of Struthers,* 319 *U. S.* 141, 63 S. Ct. 862, 87 *L. Ed.* 1313 (1943), the Court approved the use of "identification devices [to] control the abuse of the privilege by criminals posing as canvassers." *Id.* at 148, 63 S. Ct. at 866, 87 *L. Ed.* at 1319–1320 (footnote omitted). The concurring opinion of Mr. Justice Murphy in *Martin* also noted that

> [n]o doubt there may be relevant considerations which justify considerable regulations of door to door canvassing, even for religious purposes, — regulation as to time, number and identifiaction of canvassers, etc., which will protect the privacy and safety of the home and yet preserve the substance of religious freedom. [*Id.* at 151, 63 S. Ct. at 867, 87 *L. Ed.* at 1321 (Murphy, J., joined by Douglas and Rutledge, JJ., concurring)].

See *Schneider v. Irvington, supra,* 308 *U. S.* at 165, 60 S. Ct. at 152, 84 *L. Ed.* at 166–167; *cf. NAACP v. Alabama,* 357 *U. S.* 449, 464, 78 S. Ct. 1163, 1172, 2 *L. Ed.* 2d 1488, 1500 (1958); *Breard v. Alexandria, supra,* 341 *U. S.* at 644–645, 71 S. Ct. at 933–934, 95 *L. Ed.* at 1249; *Moyant v. Paramus, supra,* 30 *N. J.* at 544–545.

Perhaps the strongest statement of approval of identification requirements, and most illustrative of the dichotomy between First Amendment privileged speech and conduct susceptible to reasonable registration requirements, is found in *Thomas v. Collins, supra.* There a state law which conditioned the right of a union organizer to solicit for membership upon the securing of a card was found to be a prior restraint upon the protected First Amendment right

"to make a public speech to enlist support for a lawful movement." *Id.*, 323 *U. S.* at 540, 65 S. Ct. at 327, 89 *L. Ed.* at 445. The Court went on to describe conduct which, however, was not so protected:

> Once the speaker goes further, however, and engages in *conduct which amounts to more than the right of free discussion comprehends*, as when he undertakes the collection of funds or securing subscriptions, he enters a realm where *a reasonable* registration or *identification requirement may be imposed*. [*Id.*, 323 U. S. at 540, 65 S. Ct. at 327, 89 *L. Ed.* at 446 (emphasis added)].

[15] In the balance between the right of the surveyors to collect data and the right of the Borough to protect its homeowners against crime and untoward invasions of privacy, the latter consideration deserves some weight. See *Martin v. City of Struthers, supra*, 319 *U. S.* at 143, 63 S. Ct. at 863, 87 *L. Ed.* at 1317; *Breard v. Alexandria, supra*, 341 *U. S.* at 644, 71 S. Ct. at 933, 95 *L. Ed.* at 1249; *cf. State v. Kolcz*, 114 *N. J. Super.* 408, 416 (Cty. Ct. 1971). We find that the identification requirement of the Collingswood ordinance is sufficiently reasonable and neutral to withstand constitutional attack and is a legitimate tool in the hands of municipalities, particularly as applied to defendants' conduct here.

The free speech incursion of Ordinance No. 601 is minimal due to the nature of the conduct regulated, the ministerial issuance required, the narrow construction given the ordinance and the neutral requirements imposed. As construed the ordinance successfully withstands First Amendment attack.

IV

Defendants' final contention is that the ordinance establishes two impermissible classifications of house-to-house canvassers in that Section 10 imposes less stringent requirements on members of charitable, religious, patriotic, philanthropic or community organizations who are soliciting

"money, property or financial assistance for which no merchandise * * * [is] required" than are imposed on peddlers of wares or on surveyors.

In its barest terms the Collingswood ordinance does not infringe upon door-to-door activity differently. The infringement, which we have construed above as being incidental and neutral, applies equally to both classes—that is, all persons who conduct door-to-door activity are required to identify themselves; no one one is exempt from that stricture. Thus, we are not faced with a categorization which "closely interwine[s] with First Amendment interests," *Police Dept. v. Mosley, supra*, 408 *U. S.* at 95, 92 S. Ct. at 2289, 33 *L. Ed.* 2d at 216, or which treats door-to-door conduct dissimilarly. See *id.*

The distinctions of which defendants complain deal simply with the quantum of information necessary to complete the identification process. In examining these differences application of a test based either on mere rationality or strict scrutiny is not called for; rather we adopt a "means-focused" standard. This narrows our inquiry to "the crucial question [of] whether there is an appropriate governmental interest suitably furthered by the differential treatment." *Id.* See Gunther, 'The Supreme Court, 1971 Term — Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection," 86 *Harv. L. Rev.* 1, 20–24 (1972); *cf. Robinson v. Cahill*, 62 *N. J.* 473, 491–492 (1973).

Section 4 seeks information which is logical and necessary to the broad purpose of the ordinance but nonetheless collateral thereto. Section 10 excuses, in effect, described "charitable" solicitors from several of the information requirements of Section 4. Our view of the differences in the quantity of information being sought between Section 4 and Section 10 is that they are not differences of substance but of incidental scope.

[16] In this light we conclude that the exemptions parallel the Borough's expressed concern for their Little

League and other local community organizations. The more rigorous requirements of the general identification section might well work a real hardship on these local groups, where a large number of their solicitors are children. Most charities, unlike most business ventures, draw their solicitors from the immediate community and function in a highly localized manner. Moreover, recognized charitable, religious, and civic organizations can be expected to screen the qualifications of individuals who solicit funds for them.

We thus find that Collingswood's interest in not unduly burdening local community solicitation efforts is ample to justify the minor differences engendered in the ordinance before us. We consequently decline to void the ordinance on equal protection grounds.

V

Ordinance No. 601 of the Borough of Collingswood, as construed herein, is valid. If, with that construction, it continues to reflect the legislative intention of the municipal authorities, we strongly suggest that there be printed new copies of the enactment taking cognizance of the deletions we have effected. Not only would that be in keeping with the spirit of this opinion, but more importantly it would best serve those members of the public who might have occasion to seek guidance in the printed word.

The judgment of the Appellate Division upholding the convictions appealed from is:

Affirmed.

PASHMAN, J. (concurring). I concur with the majority in affirming the conviction of the defendants in this matter. I fully join in Parts I, II and IV of the majority opinion. I am, however, rather troubled by Part III, which concerns the possible infringement by the Collingswood ordinance upon rights protected by the first amendment to the federal constitution and *N. J. Const.* (1947) Art. I, ¶ 6, and while I concur in the result, I do so reluctantly and would decide

the case on much narrower grounds and with a much less expansive sweep than do my brethren.

It is now well established that "commercial speech" is not as completely protected by the first amendment[1] as other types of speech. *Eg., Pittsburgh Press Co. v. Pittsburgh Comm. on Human Relations,* 413 *U. S.* 376, 93 S. Ct. 2553, 37 *L. Ed.* 2d 669 (1973); *Capital Broadcasting Co. v. Kleindienst,* 405 *U. S.* 1000, 92 S. Ct. 1289, 31 *L. Ed.* 2d 472 (1972) affirming 333 *F. Supp.* (D. D. C. 1971) (3 judge court); *New York Times v. Sullivan,* 376 *U. S.* 254, 84 S. Ct. 710, 11 *L. Ed.* 2d 686 (1964); *Murdock v. Pennsylvania,* 319 *U. S.* 105, 63 S. Ct. 870, 87 *L. Ed.* 1292 (1943); *Jamison v. Texas,* 318 *U. S.* 413, 63 S. Ct. 669, 87 *L. Ed.* 869 (1943); *Valentine v. Chrestensen,* 316 *U. S.* 52, 62 S. Ct. 920, 86 *L. Ed.* 1262 (1942); *Hood v. Dun & Bradstreet, Inc.,* 486 *F.* 2d 25 (5 Cir. 1973), *cert.* denied 415 *U. S.* 985, 94 S. Ct., 1580, 39 *L. Ed.* 2d 882 (1974); *Rockville Reminder, Inc. v. United States Postal Service,* 480 *F.* 2d 4 (2 Cir. 1973); *United States v. Bob Lawrence Realty, Inc.,* 474 *F.* 2d 115 (5 Cir. 1973), *cert.* denied 414 *U. S.* 826, 94 S. Ct. 131, 38 *L. Ed.* 2d 59 (1974); *United States v. Hunter,* 459 *F.* 2d 205 (4 Cir. 1972), *cert.* denied 409 *U. S.* 934, 93 S. Ct. 235, 34 *L. Ed.* 2d 189 (1972); *George R. Whitten, Jr., Inc. v. Paddock Pools, Inc.,* 424 *F.* 2d 25 (1 Cir. 1970), *cert.* denied 400 *U. S.* 850, 91 S. Ct. 54, 27 *L. Ed.* 2d 88 (1970); *Banzhaf v. F. C. C.,* 132 *U. S.* App. D. C. 14, 405 *F.* 2d 1082 (D. C. Cir. 1968), *cert.* denied 396 *U. S.* 842, 90 S. Ct. 50, 24 *L. Ed.* 2d 93 (1969); *Boscia v. Warren,* 359 *F. Supp.* 900 (E. D. Wis. 1973); *Holiday Magic, Inc. v. Warren,* 357 *F. Supp.* 20 (E. D. Wis. 1973); *Sunday Mail, Inc. v. Christie,* 312 *F.*

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[1]Defendants do not suggest that *N. J. Const.* (1947) Art. 1, ¶ 6 affords them more protection than does the first amendment, and therefore I see no need to pursue that issue here. We are, of course, not bound to limit the protection provided by our State constitution to that provided by the federal constitution. *Robinson v. Cahill,* 62 *N. J.* 473 (1973) *cert.* denied 414 *U. S.* 976, 94 S. Ct. 292, 38 L. Ed. 2d 219 (1973).

Supp. 677 (C. D. Cal. 1970); *Passaic Daily News v. Blair*, 63 *N. J.* 474 (1973); *United Advertising Corp. v. Raritan*, 11 *N. J.* 144 (1952); *Supermarkets General Corp. v. Sills*, 93 *N. J. Super.* 326 (Ch. Div. 1966); *see Breard v. Alexandria*, 341 *U. S.* 622, 71 S. Ct. 920, 95 *L. Ed.* 1233 (1951)[2]. The distinction is a logical corollary of the modern understanding of the first amendment as primarily protecting communication of ideas and promoting the operation of democratic processes. *Holiday Magic, Inc. v. Warren, supra*, 357 *F. Supp.* at 25–26. *See generally*, Brennan "The Supreme Court and the Meiklejohn Interpretation of the First Amendment," 79 *Harv. L. Rev.* 1 (1965).

The boundaries of commercial speech have proven somewhat difficult to fix, *see generally, Holiday Magic, Inc., supra* at 25; Note, "Freedom of Expression in the Commercial Context," 78 *Harv. L. Rev.* 1191 (1965). The mere fact that speech is uttered by a corporation or association organized for economic gain, *Thornhill v. Alabama*, 310 *U. S.* 88, 60 S. Ct. 736, 84 *L. Ed.* 1093 (1940) (union); *Grosjean v. American Press Co.*, 297 *U. S.* 233, 56 S. Ct. 444, 80 *L. Ed.* 660 (1935) (newspaper corporation); *First National Bank of Boston v. Attorney General, Mass.*, 290 *N. E.* 2d 526 (Mass. Sup. Jud. Ct. 1972) (bank corporation), or that the primary purpose of the speech itself is economic gain, *Smith v. California*, 361 *U. S.* 147, 150, 80 S. Ct. 215, 4 *L. Ed.* 2d 205 (1959); *Thomas v. Collins*, 323 *U. S.* 516, 65 S. Ct. 315, 89 *L. Ed.* 430 (1945), does not in and of itself

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[2]The doctrine has, of course, not gone without criticism. *See Camarano v. United States*, 358 *U. S.* 498, 513–515, 79 S. Ct. 524, 3 L. Ed. 2d 462 (1959) (Douglas, J. concurring); *Dun & Bradstreet, Inc. v. Grove*, 404 *U. S.* 898, 92 S. Ct. 204, 30 L. Ed. 2d 175 (1971) (Douglas, J. dissenting from denial of certiorari); *Pittsburgh Press Co. v. Pittsburgh Comm. on Human Relations, supra*, 413 *U. S.* at 397–400, 93 S. Ct. 2553, 37 L. Ed. 2d 669 (Douglas, J. dissenting); Redish, "The First Amendment in the Marketplace: Commercial Speech and the Values of Free Expression," 39 *Geo. Wash. L. Rev.* 472 (1971). After *Pittsburgh Press*, though, its continued validity scarcely seems in doubt.

deprive the speech of first amendment protection. The test, as enunciated in *New York Times v. Sullivan, supra*, 376 *U. S.* at 266, 84 S. Ct. 710 and *Pittsburgh Press Co. v. Pittsburgh Comm. on Human Relations, supra*, 413 *U. S.* at 385, 93 S. Ct. 2553, flows more directly from the conceptual foundations of the distinction: Speech is "commercial" if it occurs in a commercial context and does not involve a bona fide attempt to communicate information, express opinion, recite grievances or protest claimed abuses concerning matters of public interest.

In this case, the speech involved was that of persons engaged in taking an opinion poll surveying listener preferences for a radio station. The polltakers were not attempting to communicate any ideas; they were hired merely to assist the radio station in its efforts to acquire greater advertising revenues.

Characterizing speech as "commercial" does not necessarily deprive it of all first amendment protections. At the very least, however, it frees the municipality from the onus of having to demonstrate that the ordinance is justified by a "compelling state interest" as it ordinarily must in first amendment cases. *Williams v. Rhodes*, 393 *U. S.* 23, 89 S. Ct. 5, 21 *L. Ed.* 2d 24 (1968); *United States v. O'Brien*, 391 *U. S.* 367, 376–377, 88 S. Ct. 1673, 20 *L. Ed.* 2d 672 (1968); *NAACP v. Button*, 371 *U. S.* 415, 438, 83 S. Ct. 328, 9 *L. Ed.* 2d 405 (1963); *Thomas v. Collins*, 323 *U. S.* 516, 529–530, 65 S. Ct. 315, 89 *L. Ed.* 430 (1945). The ordinance is rationally related to the legitimate ends of protecting residents against crime and invasions of their privacy. *Moyant v. Paramus*, 30 *N. J.* 528 (1959). Stripped of provisions which are recognized by the majority as unconstitutional, the ordinance in this case is no more objectionable than the one upheld in *Breard v. Alexandria*, 341 *U. S.* 622, 71 S. Ct. 920, 95 *L. Ed.* 1233 (1951), which, in effect, entirely prohibited commercial canvassing. In my view, that case is dispositive of the facts before the Court today.

The majority chooses not to rely on the "commercial speech" doctrine, characterizing it as "dubious."[3] *Ante* at 362–363. While I share the majority's lack of enthusiasm for this distinction and am not all sure that I would have chosen to create it if we were writing on a clean slate, the analysis adopted by the majority seems to me still less satisfactory. Rather than recognizing that municipalities may regulate commercial speech more strictly than they may regulate other types of speech, the majority attempts to find a rationale within the first amendment to uphold the ordinance which would be applicable to all forms of speech. Such an effort is not only unnecessary, but, as I have elaborated in my opinion in *Hynes v. Mayor and Council of Oradell*, 66 *N. J.* 376 (1974), also decided today, leads the Court in that case to uphold what are, in my view, clearly unconstitutional restrictions on protected speech. Indeed, even the "pruned" Collingswood ordinance, which is ostensibly directed at commercial speech, may be unconstitutional insofar as it sweeps in (inadvertently I suspect) protected speech, *e. g.*, opinion polls conducted by elected officials for purposes of informing themselves of the views of their constituents or by newspaper seeking to determine the attitudes of

[3]The majority apparently relies on the opinions of Justice Douglas and the view that cases subsequent to *Valentine v. Chrestensen, supra*, have generally restricted the doctrine to advertisements. The cases do not uniformly support the latter view. *See Hood v. Dun & Bradstreet, Inc.*, 486 *F.* 2d 25 (5 Cir. 1973) (credit report); *Rockville Reminder, Inc. v. U. S. Postal Service*, 480 *F.* 2d 4 (2 Cir. 1973) (attachment of private receptacles to rural mailboxes); *George R. Whitten, Jr., Inc. v. Paddock Pools, Inc.*, 424 *F.* 2d 25 (1 Cir. 1970) (solicitation of government officials); *Boscia v. Warren*, 359 *F. Supp.* 900 (E. D. Wis. 1973) (trade name); *Holiday Magic v. Warren*, 357 *F. Supp.* 20 (E. D. Wis. 1973) (solicitation of sales in pyramid scheme); *Sunday Mail, Inc. v. Christie*, 312 *F. Supp.* 677 (C. D. Cal. 1970) (distribution of newspapers). *Compare Breard v. Alexandria*, 341 *U. S.* 622, 71 S. Ct. 920, 95 L. Ed. 1233 (1951) *with Martin v. Struthers*, 319 *U. S.* 141, 63 S. Ct. 862, 87 L. Ed. 1313 (1943) (house-to-house solicitation). The eloquent concurrences and dissents of Justice Douglas are just that.

the public on significant issues. *See Talley v. California*, 362 *U. S.* 60, 80 S. Ct. 536, 4 *L. Ed.* 2d 559 (1960); *Thomas v. Collins, supra*, 323 *U. S.* at 540, 65 S. Ct. 315; *Wulp v. Corcoran*, 454 *F.* 2d 826 (1 Cir. 1972); *Strasser v. Doorley*, 432 *F.* 2d 567 (1 Cir. 1970). Construing the ordinance so as to render it constitutional (*See State v. Zito*, 54 *N. J.* 206, 218 (1969)) I would exclude such protected activities from coverage under sections 1 and 2 of the Collingswood ordinance.

I concur in the result only.

PASHMAN, J., concurring in the result.

For affirmance—Justices JACOBS, HALL, SULLIVAN, PASHMAN and CLIFFORD and Judges CONFORD and COLLESTER—7.

For reversal—None.

APPENDIX B

Opinion of Superior Court of New Jersey, Appellate Division

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

BOROUGH OF COLLINGSWOOD,

Plaintiff-Respondent,

—v.—

DONALD RINGGOLD and JOHN C. ASHHURST,

Defendants-Appellants.

Argued February 21, 1973—Decided March 8, 1973

Before Judges Kolovsky, Matthews and Crahay

On appeal from the Camden County Court.

Mr. Emanuel Greenberg of the New York bar, admitted pro hac vice, argued the cause for appellants (Mr. Bryan B. McKernan, attorney).

Mr. James A. Perrin, Municipal Prosecutor, attorney for respondent.

PER CURIAM

Three of the contentions advanced by defendants in their attack on the constitutionality of the ordinance which they violated were raised in the trial court. We agree, for the

reasons set forth in the opinion of Judge Alexander C. Wood, that none of those contentions has merit.

Defendants' fourth contention, which apparently was not advanced in its present form in the trial court, is that the ordinance "is invalid as an exercise of the police power because it fails to address itself to the alleged evil which it purports to correct."

There is no merit to defendants' added contention. Insofar as defendants' argument refers to the different registration requirements for charitable solicitations, it is but a repetition of the contention that the ordinance denies defendants the "equal protection of the laws," a contention which we have rejected for the reasons given in Judge Wood's opinion.

The additional contention also challenges the power and authority of municipalities to adopt a canvassing ordinance of the character here involved. The challenge is without substance. *Mogolefsky, et al.* v. *Schoem, et al.*, 50 N. J. 588, 595 (1967); *Moyant* v. *Paramus*, 30 N. J. 528 (1959); *Clifton* v. *Weber*, 84 N. J. Super. 333 (App. Div. 1964), *aff'd* 44 N. J. 266 (1965).

The judgments of conviction are affirmed.

A True Copy

Mortimer G. Newman Jr.
Clerk

APPENDIX C

Opinion of Camden County Court Law Division—Criminal

Docket No. App. 55-70

On Appeal from the Municipal Court of the Borough of Collingswood.

CONCLUSIONS.

MR. JAMES A. PERRIN, Prosecutor of the Borough of Collingswood, Attorney for plaintiff.

MR. BRYAN B. McKERNAN (with whom appeared Mr. Emanuel Greenberg of the New York Bar), Attorney for the defendants.

Decided: February 17, 1972.

WOOD. A. C., J. C. C., T/A

The defendants were convicted in the Municipal Court of the Borough of Collingswood on complaints charging each of them with violation of Ordinance 601 adopted January 6, 1964, entitled "An Ordinance to Further Control Canvassing and Soliciting within the Borough of Collingswood," in that, as stated in complaints, each of them "did canvass for a radio station survey without first registering to do so with the Chief of Police." They appeal to this Court. A sound recording having been made of the Municipal Court proceedings, trial of the appeal was heard *de novo* on the record pursuant to *R.* 3:23-8 (a).

The defendants contend that the ordinance is invalid as an improper exercise of the police power of the Borough and because it contravenes the rights of free speech and equal protection guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

The defendants were employees of a Pennsylvania subcontractor of Surveys Unlimited, a New York Corporation, and were engaged in collecting data on radio stations to which residents of the Borough of Collingswood were listening. They did this by going from door to door, making personal inquiries of such residents. The information so obtained was for use by the surveying organization in measuring audience preferences among programs offered by radio stations in the area.

On November 16, 1970 about 9:30 P. M. the defendants were thus conducting their survey within the Park View Apartments. They did not previously register as required by the ordinance. Mrs. Jeanne Powell, a resident of Park View, who admitted and was questioned by defendant Ringgold, became concerned by the searching and specific

nature of his questions and after his departure from her apartment, telephoned the Borough Police Department. He and defendant Ashhurst were apprehended in the Park View complex and these complaints followed.

The ordinance in question follows the pattern of similar ordinances adopted in many municipalities throughout the United States. *Moyant v. Borough of Paramus*, 30 N. J. 528 (1959). Section 1 of the Collingswood Ordinance provides as follows:

> "No person except as provided herein shall canvass, solicit, distribute circulars or other matter, or call from door to door, or place to place, in the Borough of Collingswood, without first registering with the Chief of Police, or, in his absence, the officer in charge of the police department."

Section 2 of the ordinance defines the term "canvasser or solicitor" to include

> "* * * one who is not in the business of selling goods, but one who makes surveys for research purposes, analysis, opinion polls, rating data, and any such similar work *by which of its nature (sic)* involves a door to door, or place to place activity, and shall include persons going from door to door or place to place for the purpose of contributions, donations or alms, for any persons or organization."

Section 3 states the purpose of the ordinance to be

> "to prevent fraud, crime and unethical and dishonest business practices, and for the general protection and health of residents of the Borough of Collingswood."

Section 4 sets forth in detail the registration requirements. Each registrant must file with the Chief of Police

an application in writing setting forth: the applicant's name, age, physical description, home address and local address; name and address of organization or person for whom the solicitation is being made; description of nature of the business; two photographs of the applicant about 2½ inches by 2½ inches in size; days, dates and route of business; a statement whether the applicant has been convicted of a crime, misdemeanor or disorderly persons offense, the nature of the offense and penalty, if any; and the make, model, year, color and license plate number of any automobile used and applicant's driver's license number and state of issuance.

Section 5 provides that a separate registration must be made for every solicitor, agent or employee soliciting within the Borough limits.

Section 6 provides that each registrant, upon being so registered, *shall* be issued *forthwith* by the Chief of Police, a registration certificate with photograph affixed which shall be carried by the registrant at all times and exhibited upon request.

Section 8 provides that if an application is denied by the Chief of Police "for reasons of reported unethical business practices or a previous conviction of a crime," the applicant may appeal to the Board of Commissioners who are required to hold a hearing within 10 days after the appeal is taken.

Business activity is limited to the hours of 9:00 A. M. to 5:00 P. M. Monday through Saturday.

The ordinance contains further regulations concerning the conduct of solicitors which need not be considered here.

By Section 10 of the ordinance, "any person, organization or society or association of a charitable, religious, patriotic, philanthropic or community nature desiring to

solicit funds" is exempt from the registration requirements of Section 4 provided certain less detailed registration requirements are met.

The defendants, being engaged in the conduct of a door-to-door survey are clearly covered by the ordinance. Just as clearly they violated it both by failing to register as required and by conducting their activities at hours other than those permitted by the ordinance. Therefore, unless the ordinance is invalid either generally or as applied to them, they must be found guilty.

Defendants attack the validity of the ordinance on three grounds: (a) that it is an undue burden on interstate commerce; (b) that it is an unconstitutional abridgement of freedom of speech; and (c) that it constitutes as to them a denial of the equal protection of the law guaranteed by the Fourteenth Amendment.

Dealing first with the contention that the ordinance is invalid as an unconstitutional burden on interstate commerce, this Court is of the opinion that no such undue burden is created. In New Jersey municipal ordinances regulating solicitors and canvassers have been upheld provided they do not create an undue burden on interstate commerce. *Moyant v. Borough of Paramus, supra; City of Clinton v. Weber*, 84 N. J. Super. 333 (App. Div. 1964), affirmed 44 N. J. 266 (1965).

In *Moyant v. Borough of Paramus, supra*, the Supreme Court was dealing with a suit by magazine salesmen to enjoin enforcement of an ordinance similar in its registration and regulatory requirements to the Collingswood ordinance. The Paramus ordinance, in addition to the requirements here present, required a health certification by a physician of the county; a $25 license fee; and a $1,000 surety bond to be posted by every salesman. The Chief of Police was

given the power to determine whether the applicant's business and moral character were "satisfactory." The court upheld the validity of the ordinance except for the health certification, license fee and bond requirements, which it held were unduly burdensome and discriminatory. As to the discretion vested in the Chief of Police, the court held that he must have objective facts upon which to reject an application but that the standard of "satisfactoriness" set forth in the ordinance was minimally sufficient. The court specifically held, over commerce clause objections, that solicitor and canvassing ordinances are valid provided no such undue burdens are contained therein. The court said

> "There can be no doubt that the business of soliciting and canvassing is a proper subject for regulation under the police power, as is peddling, and has been so considered for generations. The way in which the business is necessarily conducted opens the way for fraud, deceit and dishonest dealing by the unscrupulous, even though by only a minority of those engaged in it, with redress difficult or practically impossible since the solicitor is very frequently a stranger and quickly gone from the locality. Resort may also be easily had to the business by the criminally minded for the purpose of obtaining admittance to private homes in furtherance of some present or future unlawful object. 40 *Am. Jur.*, *ibid.*, §7, p. 912. Courts have universally upheld the amenability of the business to reasonable police regulations." *Moyant v. Borough of Paramus, supra*, at p. 544.

In *City of Clifton v. Weber, supra*, an ordinance containing requirements of registration similar to those here present and also exacting a $3. licensee fee was upheld in its entirety. The power to regulate includes the power to impose reasonable fees to defray the costs thereof.

The Collingswood Ordinance contains none of the defects condemned in *Moyant*. The regulatory and registration requirements are no more onerous than those upheld in *Moyant* and *Weber, supra*. There is no requirement of a health certificate or of a surety bond, and no fee of any kind is exacted.

The ordinance provides that the license *shall* be issued *forthwith* unless it appears that there is past unethical conduct or a criminal record. This is a far stricter standard than that tolerated by the court in *Moyant*. Even considering the cumulative effect on such a business as the present one of regulatory ordinances in many municipalities, this ordinance cannot be said to be unduly burdensome on interstate commerce or on the activities of these defendants. The relatively short time required to apply for and *forthwith* receive a license does not render the ordinance unconstitutionally burdensome.

The question whether the ordinance unconstitutionally abridges freedom of speech must likewise be answered in the negative. The defendants here were not attempting to disseminate religious literature as in *Schneider v. Town of Irvington*, 308 U. S. 147 (1939); nor does this ordinance *exclude* any activity such as theirs, as was attempted with respect to political solicitations in *State v. Kolcz*, 114 N. J. Super. 408 (Middlesex Cty. Ct. 1971). Rather defendants were going from door to door, invading the privacy of homes and seeking by personal questions, information for use in furtherance of a commercial enterprise. The regulation of such activity for the safety and protection of the residents of a municipality is assuredly within the ambit of its regulatory authority. The abridgement of freedom of speech, if any, is slight at most and incidental and subordinate to the public interest to be subserved.

Finally the defendants contend that the ordinance denies them equal protection of the laws because the registration requirements for charitable solicitations are less onerous than those applicable to the defendants. Because of the generally benevolent nature of charitable enterprises they are commonly accorded privileges not accorded to ordinary commercial undertakings. Here charities are not exempt from regulation. The only difference is that the registration requirements are somewhat less onerous. Such differentiation does not deny the non-charitable entrepreneur seeking to conduct solicitations the equal protection of the laws.

It is well known that unlawful and often criminal invasion of private homes are too often made or sought to be made under the guise of solicitation or canvassing for seemingly innocent purposes. And even in cases where such activity is bona fide, private citizens may be protected from the possible annoyance and inconvenience which may attend such invasions of their privacy, at least by the limitation of such activity to reasonable hours and the adequate identification of those engaged therein. These are the purposes sought to be served by the Collingswood Ordinance. It is well within statutory and constitutional standards.

I conclude that the ordinance is valid both generally and as applied to these defendants. I find each of them guilty of its violation, and in each case impose a fine of $25 as imposed in the Municipal Court. The respective fines have been paid. Judgment may be entered accordingly.

ALEXANDER C. WOOD, 3rd,
J. C. C., T/A

APPENDIX D

DECISION OF THE MUNICIPAL COURT OF THE BOROUGH OF COLLINGSWOOD.

The above cases were heard on March 5, 1971 in the Collingswood Municipal Court by David H. Schantz, sitting for Judge David Greenberg. The defendants were represented by Bryan B. McKernan, a member of the New Jersey Bar and Emanuel Greenberg, a member of the New York Bar. James A. Perrin was prosecutor for the Borough of Collingswood.

At the end of the case the Court reserved its decision affording counsel for the defendants time to file Briefs, after which the Borough prosecutor would also be permitted to file an answering Brief. The time has long since expired for the defendants to file briefs and after repeated contacts with counsel for the defendants, the Court was finally advised that no brief would be filed by defendants.

Since the charge against both defendants, namely, the violation of Borough Ordinance 601, Section 1, requiring registration by anyone soliciting in the Borough involved essentially the same set of facts, I heard them together, with consent of counsel, and will render my decision in the matter accordingly.

Briefly, the facts were that the defendants were employed by Surveys Unlimited, a New York Corporation, to solicit from certain residents of Collingswood information in the nature of a poll or survey regarding what radio and TV station they listened to and the times of day informants listened or viewed radio and television programs. The defendants had actually been engaged by an agent of Surveys Unlimited, Inc. based in Pennsylvania.

Upon the occasion in question defendants came to the apartment of a resident of Parkview Apartments at about

9:30 P. M. in the evening. They stated they were conducting a survey and asked the occupant of the apartment whether or not she would be willing to answer questions concerning the extent to which she listened to TV and radio programs. She agreed. Defendants also wanted to know what time of day she listened to the programs and her telephone number. Defendants also wanted to know if she drank other than instant type coffee and if so, what brand. The interview in question lasted approximately 15 minutes. After the interview was concluded the occupant of the apartment became concerned as to why the solicitors wanted the information and called the Collingswood Police Department. The police department sent an officer to the apartment building and apprehended the defendants who admitted that they had been soliciting the information as testified to without first having registered with the Borough as required under Borough Ordinance 601, Section 1.

Section 1 of the Ordinance in question states:

> "No person except as provided herein shall convass, solicit, distribute circulars or other matter, or call from door to door, or place to place, in the Borough of Collingswood without first registering with the Chief of Police, or in his absence, the officer in charge of the police department."

Section 2 defines in detail what shall be interpreted to be canvassing and soliciting under Section 1 and reads as follows:

> "A canvasser or solicitor shall include itinerant vendors of merchandise who shall go from door to door in this Borough, selling, causing to be sold, offering for sale, or taking orders for present or future delivery of merchandise of any description whatever. Merchandise

> within the terms of this ordinance shall include magazines, periodicals, books, and orders or contracts for a service home improvement or alterations. *For the purpose of this ordinance a canvasser or solicitor shall also be deemed to be one who is not in the business of selling goods, but one who makes surveys for research purposes, analysis, opinion polls, rating data and any such similar work by which of its nature involves a door to door, or place to place activity,* and shall include persons going from door to door or place to place for the purpose of contributions, donations, or alms, for any person or organization." (Italics added).

The Ordinance further states that its general purpose is to prevent "fraud, crime and unethical and dishonest business practices, and for the general protection, health and welfare of the residents of the Borough of Collingswood.

The Ordinance also provides that each registrant shall at the time of registering supply the Chief of Police with certain information which is enumerated under Section 4 of the Ordinance.

The facts are not in dispute, counsel for the defendants having stipulated that they were basically as testified to by the occupant of the apartment and the arresting officer. Defendants' counsel did contend that the arrest of the defendants violated their rights under the First Amendment of the United States Constitution and the New Jersey Constitution in that it abridged their rights of freedom of speech by soliciting information. This Court is not about to decide any new constitutional question, but will base its decision on the facts involved insofar as they fall within the established case and statutory law of our state.

Appendix D

In reviewing the Borough Ordinance the Court is of the opinion that it meets the tests and standards for soliciting and canvassing ordinances as laid down by our Supreme Court in the case of *Moyant v. Paramus*, 154 A. 2d 9 (1959) and the New Jersey Superior Court, Appellate Division case of *City of Clifton v. Weber*, 202 A. 2d 186 (1964).

The only significant factual distinction between the above cited cases and the case at bar is that in both the *Moyant* and *Clifton* cases the alleged violators of the statute were engaged in soliciting the sale of merchandise, whereas, in the instant case, the alleged violators were soliciting information for a poll or survey.

In the case now before the Court, the Borough Ordinance specifically defines a canvasser or solicitor to be one who makes surveys for research purposes, analysis, opinion polls, rating data and any such similar work, by which of its nature involves a door to door or place to place activity". The purpose and grounds upon which our Courts have found similar statutes constitutional as to soliciting or sale of merchandise, in this Court's opinion, would apply to the soliciting of information to sell to others.

The principles of law underlying the factual situation in the instant case are well settled. Our Courts have determined the discretionary power to grant or deny a license may be reposed in an administrative officer such as a Chief of Police or a municipality by the regulatory ordinance, where adequate standards to guide such discretion is found in, or inferable from, the ordinance itself.

This Court finds that the ordinance in question meets standards fixed by the Courts of this state for the type of ordinance involved. It also finds that the activities of the defendants fall within the provisions of the ordinance requiring registration, which the defendants failed to do. I, therefore, find both the defendants guilty as charged.

Appendix D
Decision

This Court does feel that the circumstances in this case warrant a minor fine against the individual defendants. Therefore, I fine Donald S. Ringold, $25.00, and John C. Ashhurst, $25.00.

DAVID H. SCHANTZ,
Municipal Court Judge of the Borough of Haddonfield, sitting specially for this case in Municipal Court for the Borough of Collingswood.

Dated: April 30, 1971.

APPENDIX E

Notice of Apppeal to the Supreme Court of the United States

IN THE
SUPREME COURT OF NEW JERSEY
DOCKET NO. 9569

BOROUGH OF COLLINGSWOOD,

Plaintiff-Respondent,

vs.

DONALD RINGGOLD and JOHN C. ASHHURST,

Defendants-Appellants.

Notice is hereby given that DONALD RINGGOLD and JOHN C. ASHHURST, the defendants-appellants above named, hereby appeal to the Supreme Court of the United States from the final order of the Supreme Court of New Jersey, affirming the judgment of conviction, entered on January 24, 1975.

Notice of Appeal to the Supreme Court of the United States

This appeal is taken pursuant to 28 U.S.C. Sec. 1257(2).

EMANUEL GREENBERG, of the New York Bar Admitted on motion to this Court for this action,
521 Fifth Avenue,
New York, N. Y. 10017

BRYAN B. MCKERNAN, of the New Jersey Bar,
413 Cooper Street,
Camden, N. J. 08102
Counsel for Defendants-Appellants.

Filed: SUPREME COURT OF NEW JERSEY
April 21, 1975

TRUE COPY
APR 21 1975
FLORENCE R. PISKOE
Supreme Court Clerk

APPENDIX F

Ordinance No. 601 of the Borough of Collingswood

AN ORDINANCE TO FURTHER CONTROL CANVASSING AND SOLICITING WITHIN THE BOROUGH OF COLLINGSWOOD AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF.

The Board of Commissioners of the Borough of Collingswood, in the County of Camden and State of New Jersey, does ordain:

Section 1. No person except as provided herein shall canvass, solicit, distribute circulars or other matter, or call from door to door, or place to place, in the Borough of Collingswood without first registering with the Chief of Police, or in his absence, the officer in charge of the police department.

Section 2. A Canvasser or solicitor shall include itinerant vendors of merchandise who shall go from door to door in this Borough, selling, causing to be sold, offering for sale, or taking orders for present or future delivery of merchandise of any description whatever. Merchandise within the terms of this ordinance shall include magazines, periodicals, books, and orders or contracts for a service home improvement or alterations. For the purpose of this ordinance a canvasser or solicitor shall also be deemed to be one who is not in the business of selling goods, but one who makes surveys for research purposes, analysis, opinion polls, rating data and any such similar work by which of its nature involves a door to door, or place to place activity, and shall include persons going from door to door or place

to place for the purpose of contributions, donations, or alms, for any persons or organization.

Section 3. The purpose of this ordinance is to prevent fraud, crime and unethical and dishonest business practices, and for the general protection, health and welfare of the residents of the Borough of Collingswood.

Section 4. Each registrant shall, at the time of registering, file with the Chief of Police, an application in writing which shall give the following information:

(a) Name, age and physical description of applicant.

(b) Complete permanent home and local address of applicant.

(c) Name and address of the organization or person for whom solicitation is being made.

(d) Description of the nature of the business and the goods, services, or wares to be sold, and sufficient information to determine whether or not the business he is to transact is interstate or intrastate commerce.

(e) Two (2) photographs of the applicant which shall be approximately 2½ inches by 2½ inches in size showing the head and shoulders of the applicant in a clear and distinguishing manner.

(f) The days, dates, and route of his business in the Borough of Collingswood (which shall be between the hours of 9:00 A. M. and 5:00 P. M.).

(g) A statement as to whether or not the applicant has been convicted of a crime, misdemeanor, or disorderly con-

duct offense, where and when so convicted, the nature of the offense and the penalty, if any.

(h) The make, model, year, color and license plate number of automobiles used by the applicant during the period of solicitation within the Borough, and the number of his driver's license and the state of issuance.

Section 5. A separate registration must be made for every solicitor, agent or employee soliciting within the Borough limits.

Section 6. Each registrant upon being so registered shall be issued forthwith a registration certificate by the Chief of Police (subject to Section 8 below) upon which shall be affixed one photograph of the applicant signed by the Chief of Police so that part of his signature covers part of the photograph.

Section 7. Each registrant shall carry the registration certificate at all times when in the Borough, and shall exhibit it to any citizen or pojlce (sic) officer upon request. At the conclusion of each day's canvassing or soliciting the registration card shall be deposited with the Chief of Police.

Section 8. In the event an application for canvassing or soliciting is disapproved to the Chief of Police, for reasons of reported unethical business practices, or a previous conviction for a crime, the applicant may appeal to the Borough Commissioners, who shall set a time and place for a hearing, which hearing shall be held within ten days after appeal is taken by applicant, at which hearing applicant will be given an opportunity to present his reasons why the license

should be issued. The decision of the Borough Commissioners shall be final.

Section 9. Every person, to whom a registration certificate is issued under the terms of this ordinance shall be governed by the following rules and regulations:

(a) All circulars, samples or other matter shall be handed to an occupant of the property or left in a secure place on the premises.

(b) No person subject to the provisions of this ordinance shall canvass, solicit or distribute circulars or other matter except during the hours of 9:00 A. M. and 5:00 P. M. Monday through Saturdays.

(c) No person subject to the terms of this ordinance shall enter or attempt to enter the house or apartment of any resident in the Borough of Collingswood without an express invitation from the occupant of the house or apartment.

(d) No person subject to the terms of this ordinance shall conduct himself in such a manner as to become objectionable to, or annoy, any person while soliciting within the Borough limits.

(e) No person subject to this ordinance shall make any solicitation within the Borough limits where solicitators are notified by sign that soliciting is prohibited.

Section 10. Any person, organization or society or association of a charitable religious, patriotic, philanthropic or community nature desiring to solicit or have solicited in its name money, property or financial assistance for which no merchandise, wares or services are required shall be exempt from Section 4 of this ordinance provided there s (sic)

filed with the Chief of Police an application in writing giving the following information:

(1) Names of solicitors, and purpose or cause for which solicitation is being made.

(2) Names and addresses of the officers of the organization.

(3) Names and addresses of the agents or representatives who will solicit, canvass or distribute literature in the Borough.

(B) Each solicitor for such organization, society, or association shall carry proper identification, and shall display same upon request.

Section 11. Any person violating the terms of this ordinance whether as an individual, principal or agent, or employee of another, shall upon conviction in the Municipal Court of the Borough of Collingswood, he (sic) subject to a fine not to exceed $200.00 or to imprisonment in the County Jail not exceeding 90 days or both, in the discretion of the Municipal Court.

Section 12. Any part or parts of this ordinance, if ever declared to be invalid, shall in no way or manner affect the validity of all remaining part, or parts of this ordinance, which shall continue in full force and effect.

Section 13. This ordinance shall take effect upon its passage and publication as provided by law.

Introduced: December 16, 1963.

Adopted: January 6, 1964.

APPENDIX G

Complaint—Donald S. Ringgold

NI No. 388

DOCKET # 3511

MUNICIPAL COURT OF BOROUGH OF COLLINGSWOOD
CAMDEN COUNTY

Borough of Collingswood
v.
Donald S. Ringgold
DEFENDANT

[illegible] COPY
(NON-INDICTABLE OFFENSE)

STATE OF NEW JERSEY)
COUNTY OF Camden) ss.

THE UNDERSIGNED, BEING DULY SWORN, UPON HIS OATH DEPOSES AND SAYS:

NAME Donald S. Ringgold
(PLEASE PRINT)

STREET 5450 Delaney Street

CITY-STATE Philadelphia, Pa.

ON THE 16 DAY OF Nov. 19 70 AT 3:30 P.M.

IN THE MUNICIPALITY OF Collingswood

COUNTY OF Camden STATE OF NEW JERSEY

DID UNLAWFULLY VIOLATE THE PROVISIONS OF:

STATUTE: _____ REGULATION: _____

ORDINANCE: Sub. 601, sec. 1

BY COMMITTING THE FOLLOWING OFFENSE(S): _____

did canvass for a radio station
workers without first registering
to do so with the Chief of Police,
in which they were canvassing in
a building P.V. Collingswood N.J.

THE UNDERSIGNED STATES/ASSERT HE HAS JUST AND REASONABLE GROUNDS TO BELIEVE AND DOES BELIEVE THAT THE PERSON NAMED ABOVE COMMITTED THE OFFENSE(S) HEREIN SET FORTH CONTRARY TO LAW.

11-16-70 William Ebling Pat 7
(DATE) (SIGNATURE AND IDENTIFICATION OF OFFICER) (TO BE USED WHEN ISSUING SUMMONS)

16 William Ebling
Nov. 70
Aff. James C. Maddy

COURT APPEARANCE REQUIRED ON

COURT APPEARANCE 7 DAY OF Dec. 1970 AT 2:30 P.M.

ADDRESS OF COURT 30 HADDON AVE., COLLINGSWOOD, N. J.

Complaint—John C. Ashhurst

NI. No. 1389 3574

DOCKET #

MUNICIPAL COURT OF BOROUGH OF COLLINGSWOOD CAMDEN COUNTY

Borough of Collingswood v. John C Ashhurst DEFENDANT — SUMMONS COPY (NON-INDICTABLE OFFENSE)

STATE OF NEW JERSEY, COUNTY OF CAMDEN, SS.

THE UNDERSIGNED, BEING DULY SWORN, UPON HIS OATH DEPOSES AND SAYS:

NAME John C Ashhurst (PLEASE PRINT)

STREET 1416 N. 59th Street

CITY-STATE Philadelphia, Pa.

ON THE 16 DAY OF Nov. 1970, AT 9:30 P.M.

IN THE MUNICIPALITY OF Collingswood

COUNTY OF Camden STATE OF NEW JERSEY

DID UNLAWFULLY VIOLATE THE PROVISIONS OF:

STATUTE: REGULATION:

ORDINANCE: B.O. 801, sec.2

BY COMMITTING THE FOLLOWING OFFENSE(S): did canvass for a radio station survey without first registering to do so with the Chief of Police, in that they were canvassing in "A" building Park-View Collingswood, N.J.

THE UNDERSIGNED STATES THAT HE HAS JUST AND REASONABLE GROUNDS TO BELIEVE AND DOES BELIEVE THAT THE PERSON NAMED ABOVE COMMITTED THE OFFENSE(S) HEREIN SET FORTH CONTRARY TO LAW.

11-16-70 (DATE) William Tobey (SIGNATURE AND IDENTIFICATION OF OFFICER) (TO BE SIGNED WHEN ISSUING SUMMONS)

16 NOV. 70

Judge James C. Mumbey

COURT APPEARANCE REQUIRED ☐

COURT APPEARANCE 11 DAY OF Dec. 1970, AT 2:30 P.M.

ADDRESS OF COURT 675 HADDON AVE. COLLINGSWOOD, N.J.

Supreme Court, U. S.
FILED
MAY 15 1975
MICHAEL RODAK, JR., CLERK

In The

Supreme Court of the United States

October Term, 1974

No. 74-1335

DONALD RINGGOLD and JOHN C. ASHHURST,

Appellants,

vs.

BOROUGH OF COLLINGSWOOD,

Appellee.

On Appeal from the Supreme Court of New Jersey

MOTION TO DISMISS FOR WANT OF A SUBSTANTIAL FEDERAL QUESTION

WILLIAM K. DICKEY
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(8371) LUTZ APPELLATE PRINTERS, INC.
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In The

Supreme Court of the United States

October Term, 1974

No.

DONALD RINGGOLD AND JOHN C. ASHHURST,

Appellants,

vs.

BOROUGH OF COLLINGSWOOD,

Appellee.

On Appeal from the Supreme Court of New Jersey

MOTION TO DISMISS FOR WANT OF A SUBSTANTIAL FEDERAL QUESTION

Appellee, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, hereby moves the Court to dismiss the appeal herein on the ground that it is manifest that the questions on which the decision of the cause depends are so insubstantial as not to warrant further argument.

STATEMENT OF THE CASE

The appellants Donald Ringgold and John C. Ashhurst were employed by a Pennsylvania corporation to call door to door within the Borough of Collingswood, Camden County, New Jersey to collect data from residents of the Borough of Collingswood as to the radio stations to which those residents were listening and as to the commercial products advertised on those stations. In their door to door calls, appellants communicated no ideas or beliefs to the residents upon whom they were calling. No leaflets containing advocacy of any view, idea or belief were distributed. Appellants were not advocates. They were simply collecting information — audience preferences as to radio programming and the advertising of commercial products — which was subsequently collated by appellants' employer and sold by it to subscribers. One of the residents of the Borough of Collingswood upon whom appellants called informed the Collingswood Police Department and a complaint charging appellants with violation of the "Canvassing and Soliciting" ordinance (Ordinance No. 601) of the Borough of Collingswood was subsequently filed.

The ordinance under which appellants were charged provides that, "No person . . . shall canvass, solicit . . . or call from door to door . . . without first registering with the Chief of Police . . ." A canvasser or solicitor is defined by the ordinance as one who, *inter alia,* "makes surveys for research purposes, analyses, opinion polls, rating data . . . which . . . involves a door to door activity."

It was conceded that appellants had not registered with the Chief of Police and that they had not received from him a license to canvass or solicit.

The Complaint charging appellants with a violation of the foregoing ordinance came before the Municipal Court of the Borough of Collingswood. Appellants' claim that the ordinance was constitutionally invalid, as applied to them, was seasonably raised before the Municipal Court of Collingswood and has been subsequently raised in each of the appellate courts within the State of New Jersey. The Municipal Court of Collingswood found that appellants had violated the ordinance and a judgment of a conviction against them was entered therein. The matter was heard de novo by the Camden County Court and judgments of conviction were again entered. Appellants' convictions were affirmed unanimously by the Superior Court of New Jersey, Appellate Division, and the Supreme Court of New Jersey.

Appellants filed their appeal with this Court, asserting their constitutional claims unanimously rejected by the courts below. A Jurisdictional Statement has been filed by appellants with this Court. On this motion, appellee contends that the questions raised in the Jurisdictional Statement are so insubstantial as not to warrant further argument. The argument set forth hereinafter is in support of this motion.

ARGUMENT

Appellants contend, in the first question presented in their Jurisdiction Statement that the ordinance, as applied to them, unconstitutionally deprives them of freedom of speech in violation of the First and Fourteenth Amendments to the Constitution of the United States. They rely principally upon *Thomas v. Collins,* 323 U.S. 516 (1944). There, this Court held that an ordinance requiring licensing could not constitutionally

be enforced against one who was doing nothing more than making a speech in which he advocated a cause. Here, appellants were making no speech. They were advocates for no cause. They were not communicating any ideas or beliefs. We submit that *Thomas* is inapplicable.

What appellants were doing was soliciting door to door. This Court has previously considered the validity of municipal ordinances directed against door to door solicitations. Even where such ordinances have been applied against persons intending to communicate ideas and beliefs or advocating causes, this Court has frequently indicated that such ordinances, to the extent they require only identification and do not grant impermissible discretion to licensing officials, are invalid. In *Poulos v. New Hampshire*, 345 U.S. 395 (1953), a municipal ordinance required that a license be issued for religious services to be held in a public park. The ordinance made the issuance of such a license a ministerial act. This Court held the ordinance valid. In *Cantwell v. Connecticut*, 310 U.S. 296 (1940), and *Schneider v. Irvington*, 308 U.S. 147 (1939), this Court considered the validity of ordinances requiring licensing of door to door solicitors, as applied to members of Jehovah's Witnesses who were calling door to door for the purpose of communicating their beliefs. The Court held both ordinances invalid but only because they granted impermissible discretion to the licensing officials. Indeed, in *Cantwell*, this Court indicated that a licensing ordinance calling solely for identificaiton and not containing impermissible standards could validly be applied to the appellant therein. In *Martin v. Struthers*, 319 U.S. 141 (1943), a municipal ordinance forbade persons going door to door to distribute handbills. The ordinance was held invalid as

applied to a member of the Jehovah's Witnesses going door to door distributing religious leaflets. The Court indicated, however that, "A city . . . can by identification devices control the abuse of the privilege by criminals posing as canvassers." *Id.* at 148. The concurring opinion of Mr. Justice Murphy, joined by Mr. Justice Douglas and Mr. Justice Rutledge added, "No doubt there may be relevant considerations which justify considerable regulation of door to door canvassing, even for religious purposes — regulation as to time, number and identification of canvassers, etc., which will protect the privacy and safety of the home. . . ." *Id.* at 151. The ordinance in question here has been construed by the courts of New Jersey as granting no exercise of discretion in the granting of a license and thus as requiring a ministerial issuance of a license to persons such as appellants. We submit therefore that even had appellants been communicating ideas or advocating causes, the ordinance in question here calls for nothing more than mere identification and the ministerial issuance of a license and may validly be applied even to such persons.

The appellants here, however, were not communicating ideas or beliefs. No advocacy was involved. Appellants were engaged in work leading to the preparation of a commercial product. This Court has previously held that a municipal ordinance may absolutely prohibit door to door solicitations where a commercial product is involved. *Breard v. City of Alexandria*, 341 U.S. 622 (1951). The ordinance in question here does not wholly prohibit door to door solicitation for the commercial uses made of it by appellants; it sought only to require appellants to identify themselves by making application for and being ministerially granted a license. As applied to such

a purpose, we submit that *Breard, supra,* holds that an ordinance such as appellee's may constitutionally be applied to appellants.

Appellants next contend that the ordinance although construed by the Courts below as requiring a ministerial issuance of a license, contained a discretionary power which the Courts below excised. In the second question set forth in their Jurisdictional Statement, appellants contend that the Courts below could not constitutionally prune a discretionary power from the ordinance and still hold them guilty of violating the ordinance. In support of their contention, appellants rely wholly upon *Shuttlesworth v. Birmingham,* 394 U.S. 147 (1969). There, a licensing ordinance contained impermissible discretionary standards which were excised by the Supreme Court of Alabama. This Court examined the surrounding factual circumstances and found that the local officials enforcing the ordinance had not enforced it in accordance with the safeguards inserted into the ordinance by construction. The appellant there had applied for a permit and had been refused. The enforcing official had specifically referred to the discretionary authority given to him by the ordinance as written. Here, we have no surrounding factual circumstances. Appellants here never applied for a license. No showing has been made that anyone applying to appellee for a license has ever been refused. Absent such surrounding factual circumstances, this Court has repeatedly held that facial overbreadth will not be invoked when a limiting construction has been placed on a challenged statute and that convictions will be upheld as to events occurring prior to such construction. *Broadrick v. Oklahoma,* 413 U.S. 601 (1973); *United States v. Thirty Seven Photographs,* 402 U.S. 363

(1971); *Dombrowski v. Pfister,* 380 U.S. 479 (1965); *Cox v. New Hampshire,* 312 U.S. 569 (1941).

Appellants next contend that the ordinance as applied to them is an invalid exercise of appellee's police power. It has repeatedly been held by this Court that soliciting ordinances are a proper exercise of municipal police powers. In *Martin v. Struthers,* 319 U.S. 141 (1943), Mr. Justice Black indicated that ordinances such as these serve a valid purpose since door to door distribution can be a nuisance or a blind for criminal activities. In *Niemotko v. Maryland,* 340 U.S. 268 (1951), Mr. Justice Frankfurter, in his concurring opinion, indicated that a municipality has a substantial interest in the regulation of door to door solicitation, namely, protection of the public from fraud and from criminals who use solicitation as a device to enter homes. In both *Martin, supra* and *Niemotko, supra,* the issue was the validity of the ordinances in question as applied to persons advocating beliefs. Here, appellants were advocating no ideas or beliefs; they were soliciting for a commercial purpose. In *Breard v. Alexandria, supra,* this Court held that an ordinance prohibiting solicitation as applied to persons soliciting for commercial purposes was not an improper exercise of a municipality's police power. The purpose of appellants' solicitation being commercial, we submit that *Breard, supra,* holds that appellee's ordinance, as applied to appellants, is a proper exercise of appellee's police power.

Appellants next contend that the ordinance as applied to them imposes an undue burden on interstate commerce. In *Breard v. Alexandria, supra,* this Court held that a municipal ordinance prohibiting door to door soliciting, as applied to

persons soliciting for a commercial purpose, was not an undue burden on interstate commerce.

Finally, appellants contend that they have been denied the equal protection of the law. They state, in the Jurisdictional Statement, that they are required to apply for and obtain a license while charitable solicitors are not required to do so. This is simply not correct; appellee does require persons soliciting for charitable purposes to obtain a license. Appellants set forth no argument why they have been deprived of equal protection and we submit that the opinion of the Court below, that Court having concluded that no such deprivation occurred and having set forth its reasons for reaching that conclusion, adequately answers appellants' contention.

CONCLUSION

For the reasons set forth herein, appellee respectfully submits that no substantial federal question has been presented by appellants in their Jurisdictional Statement and it accordingly moves the Court to dismiss the appeal herein on the ground that the questions presented are so insubstantial as not to warrant further argument.

Respectfully submitted,

s/ William K. Dickey
Attorney for Appellee

James A. Perrin
Solicitor and Prosecutor for
the Borough of Collingswood
Of Counsel